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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment reserved on: 29.05.2024**Judgment pronounced on: 17.09.2024*+ **CS(OS) 1300/1992, I.A. 155/2020, I.A. 2045/2021, I.A. 13922/2022**

SH. RAJESHWAR NATH GUPTA & OTHERS Plaintiffs

Versus

SH. ASHOK JAIN & OTHERS Defendants

+ **CS(OS) 2069/1998**

ASHOK JAIN AND OTHERS Plaintiffs

Versus

RAJESHWAR NATH GUPTA AND ORS. Defendants

For Rajeshwar Nath Gupta and Ors.: Mr Sameer Vashisht, Ms Harshita Nathrani, Mr Vedansh Vashisht and Mr Aman Singh, Advs.

For Ashok Jain and Ors.: Mr Sanjeev Sindhvani, Sr. Adv. with Ms Sumati Anand and Mr Sandesh Kumar, Advs.

CORAM:**HON'BLE MR. JUSTICE JASMEET SINGH****J U D G M E N T**: **JASMEET SINGH, J**

1. Since both the suits are interconnected between the same parties and have been consolidated *vide* order dated 14.10.1997, common evidence has been led and have been heard together; hence, both the suits are being decided by this common judgment.
2. In CS (OS) 1300/1992, plaintiff No. 1 is Rajeshwar Nath Gupta, plaintiff No. 2 is Raghavender Nath Gupta, plaintiff No. 3 is Ravinder



Nath Gupta and plaintiff No. 4 is Rajender Nath Gupta. For the sake of convenience, they are collectively referred to as “*Gupta family*”. Defendant No. 1 is Ashok Jain, Defendant No. 2 is Smt. Sheelawati and Defendant No. 3 is Smt. Prabha Jain. For the sake of convenience, they are collectively referred to as “*Jain family*”.

3. Suit bearing CS(OS) 1300/1992 is filed by the Gupta family, who seeks the following prayers:-

“I) declaration that the suit property bearing No. 4, Cavalry Lines, comprising land admeasuring 3504.57 sq. metres, is incapable of being partitioned and, in any case, cannot be partitioned under the terms of perpetual lease of the land underneath the aforesaid entire property.

In the ALTERNATIVE, it may be declared by this Hon'ble Court that there can be no partition of the property in suit by metes and bounds or otherwise unless a partition is effected either with mutual consent or through the court in a suit for partition, if any, filed; and

II) Perpetual injunction restraining the defendants from raising any partition wall or any other construction in the suit property, and from causing any obstruction/ annoyance/ nuisance or mischief in the common use and enjoyment of the aforesaid spaces including ENTRY and EXIT gates, the front lawn, the front verandah, the rear verandah, the rear lawn and driveways/ passages/ pathways and from spoiling and damaging the environment and beauty, nature and



character of oneness of the suit property; be passed in favour of plaintiffs and against the defendants.”

4. Brief facts as per the plaint (CS(OS) 1300/1992) are set out below:-
5. Mr. John Cecil Roberts was the perpetual lessee of a plot of land bearing No. 4, measuring 3504.57 sq. metres (0.866 acres) situated in Cavalry Lines, Mall Road, Civil Lines, Delhi (“*suit property*”) under the President of India through the Military Estate Officer *vide* a Perpetual Lease Deed dated 15.02.1951 which was duly registered in the Office of the Sub Registrar, Delhi as document No. 1737 entered in Additional Book No. I, Volume No. 186 on pages 161 to 163 on 02.05.1951. Mr Roberts passed away in the year 1956-57 leaving a Will dated 22.06.1949 which was filed with the Probate Registry at the High Court of Justice at London.
6. Subsequently, Smt. Onela Chatterjee was appointed as the Administrator of Mr. Roberts’ estate by the High Court of Judicature for the State of Punjab, Circuit Bench at New Delhi in Probate Case No. 2-D of 1957. As the appointed Administrator, Smt. Chatterjee was also authorized by the Will’s legatees to act as their attorney for the purpose of transferring and conveying the suit property, including any buildings, structures, and outhouses on it.
7. Smt. Onela Chatterjee *vide* Sale Deed dated 29.11.1960 transferred the suit property alongwith superstructure on it, in favour of Raisahib Pt. Daulat Ram Kalia s/o Late Pandit Bal Mukand Kalia and Mrs. Vidya Rani Kalia w/o Raisahib Pt. Daulat Ram Kalia which was duly registered with the Sub Registrar Delhi *vide* Document No. 5113 entered in additional book No. 1 volume No. 563 page 197-208 on



12.12.1960.

8. Smt. Vidya Rani Kalia died intestate on 17.02.1974 leaving behind her husband, two daughters and two sons. On the death of Ms Kalia, the suit property was duly mutated in the name of Pt. Daulat Ram Kalia and the two daughters and two sons in the records of Military Estate Officer, Delhi Circle *vide* letter dated 09.12.1981. Raisahib Pt. Daulat Ram Kalia also died intestate on 02.12.1981 leaving behind the two sons and two daughters as his legal heirs. Subsequently, the suit property, along with the buildings, structures, and outhouses, was duly mutated in favor of his legal heirs as perpetual lessees in the records of the Military Estate Officer following their application.
9. The following legal heirs/perpetual lessees entered into two Agreements to Sell (“ATS”) dated 16.09.1983:
 - A.Mrs. Promila Bakshi w/o Shri B.M. Bakshi r/o 161, Sukhdev Vihar, New Delhi,
 - B.Mrs. Veena Bhalla w/o Shri I.D. Bhalla r/o 4, Cavalry Lines, Mall Road, Delhi,
 - C.Shri. Chander Mohan Kalia s/o Late Pt. Daulat Ram Kalia r/o S-51, Greater Kailash I, New Delhi, and
 - D.Shri Anil Kalia s/o Late Pt. Daulat Ram Kalia r/o 161, Sukhdev Vihar, New Delhi.

They agreed to sell and transfer undivided half share of the suit property to the Gupta family and the remaining undivided half share to the Jain family, each for a consideration of Rs. 6 lakhs respectively. The agreements were executed simultaneously in favor of the Gupta family and the Jain family. Each half share of the suit property was



1752.285 sq. mtrs. (i.e. half of 3504.57sq. mtrs.), which corresponded to the area being sold to both the Gupta family and the Jain family.

10. As the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (*“Act of 1976”*) had held the excess vacant land to the extent of 364.07 sq. metres, it was mentioned in the ATS that the area agreed to be sold to the Gupta family was to the extent of $1752.285 - 182.035$ (half of excess vacant land i.e. 364.07 sq. metres) = 1570.25 sq. metres. Similarly, in the ATS executed in favour of the Jain Family, the land/area agreed to be sold was mentioned as $1752.285 \text{ sq. metres} - 182.035 \text{ sq. metres}$ (half of excess vacant land of 364.07 sq. mts.) = 1570.25 sq. mts.
11. The two ATS included that if any excess vacant land, as determined by the Competent Authority under the Act of 1976, was acquired, only half of that land would be deducted from the 1752.285 square meters agreed to be sold to each of the Gupta and Jain families. Additionally, if any such land was exempt under Section 20 of Act of 1976, the vendors/owners would transfer that land to the Gupta and Jain families respectively by way of Deed of Transfer or any other document as might be required by them at no extra cost.
12. On the day when two ATS were executed, the possession of the entire suit property was handed over to the Gupta and Jain families. The owners/vendors also executed a General Power of Attorney (*“GPA”*) in favour of Rajeshwar Nath Gupta/plaintiff No. 1 and Ashok Jain/defendant No. 1 authorising them to finalize the sale, obtain necessary permissions from the Competent Authority, handle the execution of sale deeds, and represent the parties before municipal and



other authorities for property assessment, valuation, and mutation.

13. A Special GPA was executed jointly in favour of the plaintiff No. 1 and defendant No. 1, authorizing them to manage the exemption of 364.07 square meters of excess vacant land under the Act of 1976, pay any related fees or expenses, handle construction or renovation work, and obtain necessary approvals and completion certificates. Additionally, the owners/vendors executed four indemnity bonds in favor of the Gupta and Jain families, promising to cover any claims or losses related to the property's title.
14. It is further stated that as there was bar against the transfer, mortgage, gift or lease of any excess vacant land under section 10 of Act of 1976, it was agreed that the shares sold to the Gupta family and Jain family would be clearly defined and demarcated only after the Government finalized and took possession of the excess land, without damaging the oneness of the suit property.
15. Further, in both the ATS, it was mentioned that the area (part) of the suit property together with buildings constructed thereupon was described in the schedule and delineated in the plan as Annexure-B and marked red in pencil, yet on account of the aforesaid agreement/arrangement/understanding/intention of the parties hereto and the legal bar and impediment under section 10 of the Act of 1976, and due to non-specification/non-determination/non-demarcation of the excess vacant land, no part was and could possibly be delineated in any colour in the plan annexed. So the half undivided share/area agreed to be sold to the Gupta family and to the Jain family respectively was not shown in red in pencil on the plan Annexure B



and as such, Annexure-B plans were left out without being marked red in pencil.

16. After taking possession of the suit property on 16.09.1983, the Gupta family occupied approximately half of the constructed area on the South West side for their residence, while the Jain family occupied the North East side. The Gupta family also took possession of the outhouses on the South West side and the Jain family took those on the North East side. Common areas such as gates, driveways, paths, lawns, and verandahs were shared and intended for joint use and enjoyment by both Gupta and Jain families.
17. In both the ATS, no specific portion of the suit property was ever defined or agreed to be sold to either of the families. Such a division cannot happen until the excess vacant land was finally demarcated and acquired by the Competent Authority under section 10 of Act of 1976. Additionally, under the terms of the perpetual lease, the land could not be divided without permission from the Military Estate Officer, which was neither sought nor granted at the time of ATS.
18. The Gupta family and Jain family applied for the mutation of their respective half shares in the suit property with the Military Estate Officer. As per the Gupta family, no mutation was asked for any defined/demarcated portion of the suit property. The Military Estate Officer issued a letter dated 10.06.1985 confirming the mutation of 1752.285 sq. mtrs. of the suit property to each family, without specifying any distinct portions of the suit property. It is also stated that no plan of the suit property whatsoever and not even plans annexed with the ATS were filed with the Defence Estate Officer for



the purpose of mutation.

19. A Supplementary Agreement dated 04.03.1989 was executed by the owners/vendors in favour of both the families.
20. Smt. Veena Bhalla executed the Supplementary Agreement on 04.03.1989, Shri Anil Kalia executed the Supplementary Agreement on 24.03.1989, Shri Chander Mohan executed the Supplementary Agreement on 20.06.1989 in favour of the Gupta family in which these vendors specifically mentioned and stated that they had agreed to sell an area of 1752.285 sq. metres – 182.035 (half of excess vacant land) = 1570.25 sq. metres from and out of the plot commonly known as 4, Cavalry Lines, Mall Road, Delhi. Smt. Veena Bhalla and so also the other two Vendors namely Shri Chander Mohan and Anil Kalia also executed GPA separately and respectively in favour of the Gupta family on the same date of the execution of the Supplementary Agreement. In GPA, these vendors (1/4th shares each) authorised the plaintiff No. 1 and defendant No. 1 to manage the suit property.
21. From 15.09.1991 till February, 1992, there were numerous acts wherein Jain family tried to construct a wall, and obstruct the peaceful possession of the Gupta family which resulted in numerous complaints and counter complaints.
22. The Jain family filed a Suit for Injunction against the Gupta family in the Court of Civil Judge, Delhi on 18.02.1992 along with an application for grant of interim injunction. The Jain family in the said suit, filed a plan of the suit property falsely showing a portion of the property in red colour alleged to have been sold to him, by tampering and interpolating the plan which was annexed to their ATS dated



16.09.1983 as annexure-B, whereas in the original plans annexed with the ATS in their favour and in favour of the Gupta family, no portion of the suit property was shown in red in pencil or ink.

23. The learned Court of Sub-Judge, Delhi not being satisfied with any *prima facie* case, refused to grant any ex-parte injunction and issued summons to the Gupta Family in the said suit.
24. As the Jain family were wrongfully, illegally and fraudulently threatening to raise the partition wall in the suit property to effect partition with the assistance of anti-social elements or otherwise, the Gupta family had no other efficacious remedy and hence filed the present suit.
25. Pursuant to the issuance of summons, the Jain Family filed their written statement.
26. In their written statement, it is stated that there is no dispute that two ATS dated 16.09.1983 were executed by the vendors/owners of the suit property, one in favour of the Gupta family and another in favour of the Jain family. During the negotiations, the owners of the suit property had informed both the families that by an order dated 30.08.1979, the Competent Authority under the Act of 1976 had held, *inter alia*, out of the said total land of 3504.57 sq. mtrs. comprised in the suit property, there was an excess land of 364.07 sq. metres and, thus, only 3140.50 sq. metres of land, together with the existing structures thereon, were within the ceiling limit.
27. Further, during the negotiations, all the parties had further agreed that for a proper, complete and effective use of the space/area shown as 'lobby' in the plan Annexure 'D-1', the 'lobby' space/area be



divided/converted into two rooms, and one room towards the North-Western side be the part of the Gupta family's portion and the other room towards the South-Eastern side be the part of the Jain family's portion. The Jain family's portion was accordingly so delineated in the plan, which was annexed as 'Annexure-B' to the aforesaid ATS dated 16.9.1983. The Gupta family had not placed the plan annexed with the ATS which shows the Jain family's portion in red but the Jains have filed the same with their written statement.

28. A perusal of the plan would show that even the Gupta family's portion stands delineated and shown 'un-coloured' in this plan. Nothing in the suit property was ever intended to be undivided between the Gupta family and the Jain family nor did anything thereof ever remain undivided. The respective portions of the suit property were always intended to be separate, distinct, specific, defined, exclusive and independent, and those portions have always remained as such since 16.09.1983.
29. Pursuant to the ATS dated 16.09.1983, the perpetual lessees/owners- Smt. Promila Bakshi, Smt. Veena Bhalla, Shri Chander Mohan Kalia and Shri Anil Kalia finally assigned, conveyed, transferred and sold all their rights, title and interests in the North-Eastern, half portion of the suit property to the Jain family *vide* four sale deeds:-
 - A. Dated 25.1.2000 registered as document No. 384 in Addl. Book No. I, Volume No.16, on pages 103-119,
 - B. Dated 12.1.2000, document No. 160 in Addl. Book No.1, Volume No.7, on pages 106-121,
 - C. Dated 8.3.2000, as document No.1282 in Addl. Book No.



- I, Volume No.50, on pages 57-74 and
D.Dated 18.02.2000, document No.1015 in Addl. Book
No.1, Volume No.40, on pages 76-92 on 24.2.2000, all In
the office of the Sub Registrar-I, Delhi respectively.
- 30.** It is further averred that the North-Eastern half of the suit property is solely owned by the Jain family, and the previous lessees/owners have no rights to this part. On the other hand, the Jain family has no claim to the South-Western half of the suit property. Both halves are entirely separate and independent from each other. The suit property, therefore, stands fully and finally divided/partitioned into two separate, distinct, specific, defined and independent portions one described as North-Eastern half portion of the suit property and the other described as South-Western half portion of the suit property.
- 31.** The ATS dated 16.09.1983 included clauses related to excess land based on a 1979 order identifying 364.07 sq. mtrs. of excess land. However, this excess land was never seized by the State Government. With the Act of 1976 being repealed by the Urban Land (Ceiling & Regulation) Repeal Act, 1999, all related proceedings stood nullified, and the ATS and sale deeds should be considered as if the 1976 Act never existed.
- 32.** It is further stated that there are two gates in the suit property. One gate falls in the Gupta family's portion and the other gate falls in the Jain family's portion. After both the families took exclusive possession of their respective portions of the suit property, the Gupta family put up a name plate reading as:-

“R. N. GUPTA



4

CAVALRY LINES”

on their own gate and similarly, the Jain family put up a name plate reading as

“ASHOK JAIN

4

CAVALRY LINES”

on their own gate.

33. Both the families are in use and occupation of their respective portions and have been carrying out various development including separate electricity and water meters.
34. In the year 1988, the Gupta family, without obtaining the requisite sanctions from the concerned authorities, constructed a room on the first floor of their own portion of the suit property, and they have been exclusively using that room.
35. In early 1991, the Gupta family approached the Jain family and expressed their desire to purchase and possess the Jain family's portion also, but this was not acceptable to the Jain family.
36. In April, 1991, the Gupta family started demolishing the outhouse, which existed in the rear part of their portion of the suit property, and after demolishing, the Gupta family, without obtaining the requisite sanctions from the concerned authorities, constructed a new and about four times bigger building on that land as well as some additional land, which was adjacent to and around that land on all its sides, over a total area of about 3000 sq. feet. The said construction work continued till about the middle of September, 1991.



37. In the meantime, the Jain family, in order to avoid further nuisance and annoyance from the Gupta family and to protect their own privacy and enjoyment of their portion of the suit property, started constructing, in June, 1991, a purdah/boundary wall on the South-Western outer limit of their portion, starting from its South- Eastern end point and terminating at its North-Western end point. However, for some reasons, including the deteriorating health of the father of defendant No.1, the said work had to be suspended somewhere in the second week of July, 1991. By that time, boundary wall had been constructed on the “kuchha” areas of the front side as well as the rear side of the “pucca” area of the Jain family portion of the suit property, and demarcation line had also been engraved and filled with black paint. It is clarified that the work of boundary wall including demarcation line was carried by the Jain family in their portion and at their expense. Unfortunately the health of the father of the defendant No.1 did not improve and he ultimately died on 20.07.1991.
38. When the Jain family decided to resume the aforesaid suspended work for completing the said wall, they brought the building material in the early morning hours of 15.09.1991 and stacked the same in their portion of the suit property, another police complaint was lodged with the Police Station Maurice Nagar, Delhi against the Jain family. However, when after some time the labour also arrived at the site, and was about to resume the said work, the Gupta family tried to create obstacles and threatened defendant No.1 with dire consequences to the extent of even killing him.
39. A Kalandra dated 14.11.1991 was filed under sections 107/150 of the



Code of Criminal Procedure in the Court of Shri Mauji Khan, Special Executive Magistrate; North District, Civil Lines, Delhi against plaintiffs Nos. 1 and 3 as the “First Party” and defendant No.1 as the “Second Party”.

40. The Special Executive Magistrate visited the suit property and, after making his own assessment of the factual position, he conveyed to the plaintiffs there and then to the effect that the plaintiffs should not intrude into the defendants’ portion of the suit property, and the plaintiffs should respect the boundaries already laid and defined clearly, as inspected by him, and the plaintiffs should use the entrance to their portion from their own gate only. At that time, the Gupta family undertook to abide by the said verbal directions/orders of the Special Executive Magistrate. Peace was, thus restored.
41. Again on breach of assurance, another complaint was made on 25.01.1992 to the Special Executive Magistrate.
42. The Jain family again resumed the left out construction work of the said purdah/boundary wall on 14.02.1992, but the Gupta family again created obstacles in that work and so, no such work could be done even on 14.02.1992. As the completion of the said purdah/boundary wall had by then become a dire and immediate need of the Jain family for their safety and privacy, and further as they needed, *inter alia*, a safe place to live in, the Jain family were left with no other alternative except to file a civil suit for obtaining necessary and appropriate reliefs against the Gupta family. While the suit filed by the Jain family was pending, the Gupta family filed the present suit.
43. The pleadings in both the suits are almost identical and are not



repeated herein for the sake of brevity and to avoid duplication.

44. The prayers in the Suit No. 57 of 1992 which was on transfer renumbered as CS(OS) 2069/1998 filed by the Jain family as noted above reads as under:-

“a) To grant a decree of declaration that the plaintiffs are owners in possession of the North Eastern half portion of the suit property bearing No.4 Cavalry Lines, Mall Road, Delhi as shown in red colour in the site plan annexed to this amended plaint, and the suit property stands divided/partitioned by virtue of the sale deeds detailed in para 2A above, and plaintiffs are entitled to deal with the same as such owners including by raising partition wall along the dividing line of the property on the ground floor, open space as also the terrace;

b) to grant a decree of perpetual injunction restraining the defendants, their, agents and employees from creating obstacles and interference in the remaining erection, raising and completion of the boundary/purdah wall over and above the already built up wall which exists in the premises of the plaintiffs and is shown in Sections and marked as AB and EF (in the unbuilt portion on the ground floor) and along and on the Section BC and DE (in the built up portion on the ground floor) along the demarcation line, and along and on the Sections marked BC, CD and DE (as ascertainable) on the terrace floor along the demarcation line shown on the plan annexed at No.4, Cavalry Lines,



Mall Road, Delhi.

c) to grant a decree of perpetual injunction restraining the defendants, their agents and employees from entering into and causing annoyance, interference or nuisance and disturbing the peace and tranquility in the premises of the plaintiffs shown 'red' on the plan annexed at No.4 Cavalry Lines, Mall Road, Delhi,”

- 45.** The said suit was transferred to this Court *vide* Order dated 14.10.1997 and was renumbered as CS(OS) 2069/1998 and both suits were to be tried together.

ISSUES FRAMED

- 46.** After completion of the pleadings, the following issues were framed in suit CS(OS) 1300/1992 filed by the Gupta family, *vide* order dated 04.04.2006:-

“1)Whether the property bearing No.4, Cavalry Lines comprises land admeasuring 3504.57 sq.metres is incapable of being physically partitioned? OPP

2)Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP

3)Whether the plaintiff is entitled for a decree of perpetual injunction as prayed for? OPP

4)Whether any partition wall was constructed for partitioning the property by metes and bounds, if so to what effect? OPP

The said issue was amended vide order dated 06.10.2006 which reads as:-



Whether any partition wall was constructed for partitioning the property by metes and bounds, if so, to what extent and to what effect? OPD

5)Whether the plaintiffs are estopped from claiming any relief as alleged in the written statement? OPD

6)Whether any specific, defined, distinct and independent portion was not agreed to be sold by the owners to the defendants, if so to what effect? OPP

7)Relief”

- 47.** Further in suit CS (OS) 2069/1998 filed by the Jain family, vide order dated 04.04.2006, the following issues were framed:-

“1.Whether the plaintiff is entitled for a declaration that he is the lawful owner and in possession of North East half portion as shown in red color in plan annexed with the amended plaint? OPP

2.Whether the plaintiff is entitled for a decree of perpetual injunction as prayed for? OPP

3.Whether the plaintiff has concealed the material facts as alleged by the defendants, if so, to what effect? OPD

4.Whether the suit is bad for mis-joinder of parties? OPD

5.Relief”

- 48.** On 06.10.2006, this Court directed that the evidence recorded in CS(OS) 1300/1992 shall also be read in CS (OS) 2069/1998.

EVIDENCE LED BY THE PARTIES

(GUPTA FAMILY)

- 49.** Gupta family examined 2 witnesses to prove their case. PW1 is



Rajeshwar Nath Gupta and PW2 is Rajender Nath Gupta.

- 50. *PW1/Shri Rajeshwar Nath Gupta*** reiterated his stand taken in plaint. He deposed that the suit property was never divided. He further stated that lawns, drive way, exit and entry gate etc. were to be enjoyed in common and jointly by both the families. Jain family in collusion with the erstwhile owners during the pendency of the present suit, have executed four sale deeds dated 12.01.2000, 25.1.2000, 18.02.2000, 8.03.2000, and further incorporated therein the recitals to the effect that half portion of the suit property in North East conveyed by the owners in favour of the Jain family is separate, distinct, specific, defined and independent.
- 51. *PW2/Rajender Nath Gupta*** was a witness to the documents of “Jains” as well as “Guptas” executed in the year 1983. He categorically in his evidence in para 3 and 4 deposed that the suit property was purchased jointly by the both the families. He also deposed that both the families purchased three other properties jointly at Gole Market, Chandni Chowk and Minerva Cinema. He also deposed that lawns, passages, gates and verandas were the common places to be enjoyed by the parties jointly. He also deposed that he resided in the property from 1984 to 2005.

(JAIN FAMILY)

- 52.** Jain family examined total 6 witnesses to prove their case.
- 53.** DW1 is Ashok Jain, DW2 is S.K. Puri, Advocate, DW3 is Hemant Bhatia, Record Incharge, Office of Sub-Registrar-I, Kashmere Gate, Delhi, DW4 is Narender Kumar, Head Clerk, Building Department, MCD, Civil Lines, Delhi, DW5 is Naveen Ganda, Record Lifter in the



Department of Delhi Archives, and DW6 is Shri Rattan Singh, SDO II, Office of Defence Estates Officer, Delhi Circle, Delhi Cantt.

- 54. DW1/Ashok Jain** has deposed in his evidence that they were advised by one Mr V.S. Garg that as the property was very large and the parties to the suit were unable to afford to purchase it individually, it was possible to buy the same in equal half portions as the suit property was easily divisible into equal, separate, distinct, specific, defined and independent portions.
- 55.** He further deposed in his evidence that there is no term and condition in the Perpetual Lease Deed dated 1951 which prohibited division and partition of the suit property by metes and bounds. Further he alleged that the Gupta family constructed new outhouses and extended the same from 800 sq feet to 3000 sq. ft., once the Gupta family were able to complete the construction of their outhouses in 1991, they obstructed the Jain family from raising the boundary wall. Jain family emphasized that his portion of the property was physically partitioned, divided and separated by a demarcated line and was actually a purdah wall.
- 56. DW2/SK Puri, Senior Advocate** appeared to prove a notice Ex DW-1/5 which was issued at the behest of one of the previous co-owners against the Gupta family's.
- 57. DW3/Hemant Bhatia**, In charge, Office of Sub Registrar-1, Kashmiri Gate, Delhi and proved the four sale deeds dated 12.01.2000 which were executed in favour of the Jain family during the pendency of the suit.
- 58. DW4/Narender Kumar** was summoned from the MCD to prove



unauthorized constructions made by the Gupta family in the suit property.

- 59. *DW5/Naveen Ganda*** was a Record Keeper in the Department of Delhi Archives. He produced the sale deed dated 29.11.1960 and the perpetual lease deed dated 15.02.1951. These two documents as already stated above have already been filed by the Gupta family themselves.
- 60. *DW6/Rattan Singh*** was summoned from the Office of Defense Estate Officer. He brought certain letters with him along with the extracts from the Military Land Register, Cash Books showing the receipt of lease money from the year 1985 to 1992 etc.

DOCUMENTS EXHIBITED DURING THE TRIAL

- 61.** List of documents exhibited by both the families are extracted below:-

<i>S. No.</i>	<i>List of Documents</i>	<i>Exhibit No.</i>
1.	Perpetual Lease Deed dated 15.02.1951	Ex PW-1/10
2.	Sale Deed dated 29.11.1960	Ex PW-1/11
3.	ATS 16.09.1983 in favour of Gupta family	Ex PW-1/1
4.	Site Plan in favour of Gupta	Ex PW-1/3
5.	GPA dated 16.09.1983	Ex PW-1/2
6.	Power of Attorney dated 16.09.1983	Ex P-2
7.	Indemnity Bonds in favour of Gupta	Ex P-3 to Ex P-6
8.	Joint Possession Letter dated 16.09.1983	Ex PW-1/5/ Ex DW-1/P-3
9.	Supplementary Agreements in favour of Gupta	Ex PW-1/4 (also Ex P-7), Ex P-9, Ex P-11



10.	Joint General Power of Attorney by Smt Veena Bhalla.	Ex P-8
11.	Joint General Power of Attorney by Shri Anil Kalia.	Ex P-10
12.	Letter dated 07.12.1994 by DEO	Ex PW-1/12
13.	Copy of Extract from Military Register	Ex PW-1/6
14.	Copy of Statement of Account	Ex DW-1/P-1
15.	Copy of letter dated 03.05.2000 by DEO to defendant No. 1	Ex DW-1/P-2
16.	Mutation letter dated 10.06.1985 in favour of Jain family	Ex DW-1/2
17.	Lease Rent Receipt dated 15.05.2000 by Estate Officer	Ex PW-1/7
18.	Photographs with Negatives	Ex PW-1/8 (Colly) and Ex PW-1/9
19.	Vendors permission to Gupta and Jain family to use telephone	Ex DW-1/P4
20.	Mutation letter dated 10.06.1985 in favour of Gupta family	Ex P-12
21.	Sale Deeds dated 15.11.2000 executed in favour of Gupta family.	Ex PW-1/D1 and Ex PW-1/D2
22.	Greh Pravesh Photograph with Negative	Ex PW-1/D3 and Ex PW-1/D4
23.	DEO letter dated 06.08.1993 for cancellation of mutation to both the family	Ex PW-1/D5
24.	ATS dated 16.09.1983 in favour of Jain family	Ex P-13
25.	Site Plan in favour of Jain	Ex DW-1/1
26.	Indemnity Bonds in favour of Jain	Ex D-1 = Ex DW-1/30 to Ex D-4 = Ex DW-1/33
27.	Supplementary Agreements in	Ex D-5, Ex D-



	favour of Jain	6, Ex DW-1/4
28.	Eight lease rent receipts paid by the Jain family	Ex DW-1/3 (Colly)
29.	Notice dated 10.05.1989 by Advocate S.K. Puri	EX DW-1/5
30.	Certified copies of notices issued by MCD obtained by Jain family under RTI	Ex DW-1/6 to Ex DW-1/13
31.	Photographs	Ex DW-1/14 to Ex DW-1/17
32.	Negatives of the above photographs	Ex DW-1/18 to Ex DW-1/21
33.	Proceedings of Local Commissioner	Ex DW-1/22 and Ex DW-1/23
34.	Site Plan filed with Amended Plaint	Ex DW-1/24
35.	Sale Deed dated 25.01.2000 executed by Promila Bakshi in favour of Jain family	Ex DW-1/25
36.	Sale Deed dated 12.01.2000 executed by Veena Bhalla in favour of Jain family	Ex DW-1/26
37.	Sale Deed dated 08.03.2000 executed by Chander Mohan Kalia in favour of Jain family	Ex DW-1/27
38.	Sale Deed dated 18.02.2000 executed by Anil Kalia in favour of Jain family	Ex DW-1/28
39.	Letter dated 16.09.1991 of Jain family to SHO, Maurice Nagar	Ex DW-1/29
40.	Photographs of Gupta family outhouse	Ex DW-1/14 and Ex DW-1/15
41.	Misalband Register	Ex DW-4/1
42.	Original Perpetual Lease Deed	Ex DW-5/2



	dated 15.02.1951	(Colly)
43.	Original Sale Deed dated 29.11.1960	Ex DW-5/1
44.	13 documents produced by DEO (DW-6)	Ex DW-6/1
45.	DEO's demand of rent dated 05.05.2000	Ex DW-6/PX-1
46.	Letter of July, 2000 issued by DEO to Gupta family	Ex DW-6/PX-2

SUBMISSIONS ON BEHALF OF JAIN FAMILY

62. Mr Sanjeev Sindhwani, learned senior counsel appearing on behalf of the Jain family states that the genesis of both the suits is the erection of purdah/boundary wall. It was proposed to be constructed for the enjoyment of Jain family's exclusive portion of the suit property. Since the Gupta family prevented the construction of purdah/boundary wall, the Jain family filed suit for Injunction being CS(OS) 2069/1998 (filed on 18.02.1992). In the said suit, Jain family relied upon the ATS dated 16.09.1983 and claimed that they have purchased the North East side of the suit property and referred to the site plan (Ex DW-1/1) annexed with the ATS which forms the integral part of the ATS (Ex P-13). The Gupta family denied the same and stated that no partition had taken place. Since the issue of excess vacant land got settled with the repeal of Act of 1976 in 1999, fresh Sale Deeds were executed in favour of both the families and thereafter the plaint was amended.

The documents: a clear indicator of separate sales

63. Learned senior counsel submits that by virtue of two ATS, separate portions were assigned to both the families. The two portions were occupied by two families, as per the schedule in their respective ATS.



Each family occupied a separate part of suit property and continue to do so till date. This, by itself, makes evident the intent to have two separate and independent portions owned and occupied by the two families. If the intention was otherwise, one single agreement would have been executed.

64. Not only this, along with separate agreements (Ex PW-1/1 in favour of Gupta family and Ex P-13 in favour of Jain family), separate Indemnity Bonds (Ex. DW-1/30 to Ex. DW-1/33) were also executed. Two families came to possess the two portions independently including built up as well as open areas, without any interference from each other. This situation continues till date.
65. He submits that the principal document i.e. Perpetual Lease deed dated 15.02.1951 (Ex DW-5/2 (colly)) does not prohibit sub-division of land. The said deed in Clause 8 provides for further assignment of the land or “any part thereof”. The only requirement is for a mere intimation to the lessor within one month. There is, therefore, no impediment to sub-divide the suit property. Hence, the two separate ATS, have the sanction of the parent document. The ATS are sufficiently indicative of the intent to have a division and separate enjoyment of two specific portions. In addition to numerous clauses, reliance is also placed on Clause QQ, Clause 2, Clause 6 and Schedule.
66. The two ATS make it evident that by their very terms, distinct and specified area of 1752.285 sq. mtrs. was agreed to be conveyed to two families. There is nothing in the suit property which was agreed to be undivided. The respective portions were always separate, specific,



independent and exclusive and always remained the same.

67. The General Power of Attorney (Ex PW-1/2) provides for “*sub-dividing the said property so as to separate the vacant land and make into separate building plots or plots to extend and develop the built up portion of the said land and to develop the vacant land*”. In fact, the submission of Gupta family that all documents are joint, is flawed, as even the GPA/POA, was executed for sub-division.
68. The execution of separate Indemnity Bonds with specific mention of distinct portions/area in favour of respective families is a clear indicator of separate and distinct sales. The Indemnity Bonds, too, do not anywhere mention any undivided land. Rather, the executant in this document says that “*I have entered into an agreement for sale one half portion of the said land i.e. land admeasuring about 1570.25 sq. mt. along with building*”. Supplementary Agreements dated 04.03.1989 were also executed separately in favour of respective families, specifying half area each, “*out of plot commonly known as 4, Cavalry Lines, Mall Road, Delhi*”. The language is clear regarding separate sales of independent and distinct areas.

The documents drafting: An informed choice.

69. Learned senior counsel submits that the two ATS were drafted and finalized by reputed legal experts. There is ample evidence to show that the parties were also duly consulted. The very fact that the word “undivided” has not been mentioned clearly shows that the suit property was divided. This holds true even for the Supplementary Agreements.
70. In this scenario, it is hard to contend that a fact as important as that



“undivided” portions being purchased by the parties could have been missed out. If the intention was to purchase the property jointly, the drafting of documents was bound to be joint. The Gupta family, surely, would not have drafted the ATS, the way the two documents stand. The language, the expressions, the terminologies etc. employed in the documents leave no manner of doubt in this regard.

71. He further submits that the Gupta family contesting that the living areas are separate and open areas are joint is unsupported by any evidence and is contrary to the pleadings.

Separate Mutations

72. He submits that in furtherance thereof, both the families had also obtained separate mutations. The mutation letter dated 10.06.1985 (Ex P-12 and Ex DW-1/2) provides for separate mutations of the respective areas in favour of two families. Both parties made separate applications and filed affidavits dated 16.05.1985 for mutation of their respective separate independent half portions of the suit property in their respective names. The mutation, as such, was also affected separately in favour of each of them for an area measuring 1752.285 sq. mtrs.
73. It is also an admitted fact that after mutation, both families started paying the lease rent separately. The eight original receipts of Jain family, Ex DW-1/3 (Colly) are indicating that the lease rent paid w.e.f. 1985 to 1992. Similarly, the Gupta family also paid its lease money separately for its own half portion. The cash book of DEO produced by DW-6, shows entries of payment separately by two families, i.e. till the year 1992, when litigation started between the



parties.

74. This fact further stood confirmed by DEO that the premises stood subdivided in its letter dated 04.12.1991 (Part of DW-6/1 (Colly)). It is also mentioned in this letter that in terms of Para I (8) of Perpetual Lease Deed dated 15.02.1951 (Ex DW-5/2 (colly)), the vendees had the right to sub-lease/transfer their rights under intimation to the DEO. The construction/existence of wall is also confirmed by this letter.
75. With regard to the mutation being cancelled (Ex PW-1/D5), he submits that the fact this mutation was cancelled subsequently was only for the reason that the parties could not produce the registered Sale Deeds (which, obviously could not be executed for urban land ceiling/excess land issue). In any case, what is important is that both families had approached and obtained the mutation separately. Their intent clearly shows that the two portions in the suit property was distinct. Otherwise there was no reason for making an separate application for mutation.

The Wall

76. Learned senior counsel urges that the part construction of wall is an admitted fact. It is also admitted that the boundary wall is situated within the premises of Jain family and it remains confined to Jain family's own portion and no part of it goes to Gupta family's portion. The Gupta family contends that the wall was constructed not for dividing/demarcating but for the purpose of preventing water flow from the SW portion to NE portion to prevent siltage and erosion of earth/soil.
77. Learned senior counsel submits that to prevent siltage in a lawn, no



person would logically conceive construction of a wall right in the middle thereof. The construction of a wall would only mean shifting of siltage from one part of the lawn to the other. The accumulation of silt would thus subsist. The wall cannot, even on a bare logic, prevent accumulation of water. To ease flow of water and prevent siltage, one needs to ensure that water flows out/away and is not blocked (by constructing a wall). This itself is an admission.

78. Still further, the demarcation engraved line filled with black paint on the floor of front and rear verandah and adjoining pucca open area is admitted. There was no complaint of the same by Gupta family despite numerous complaints on other matters, even on trivial ones. Why this black lines was made dividing the suit property, has remained wholly inexplicable. The stand of PW-1 in his evidence that the “*black engraved lines had been made in my absence and exist even in front of my bedroom*” is devoid of truth.
79. The existence of the wall, as a partition wall, was also confirmed by the Defence Estate Office. The witness DW-6 exhibited the letter dated 04.12.1991 stating that “*The sites have already been demarcated on the ground upto plinth level but now Sh. Jain has sought permission to raise a boundary wall upto a reasonable height as permissible under the rule*”. Even this permission was granted vide letter dated 07.04.1992 stating that “*....Shri Ashok Jain, in view of the security and safety involved of his and his family may be permitted to erect the proposed wall...*”. Hence it is clear that the purdah wall was constructed for partitioning the suit property.



Two Gates : Two separate properties

80. The existence of two separate gates in the suit property is again a clear indicator of the parties having purchased two separate portions. The Jain family in their written statement have categorically stated that there are two gates falling in respective portions of two families. Separate name plates were put on two separate gates.
81. PW1 in this cross examination admitted the photograph Ex PW-1/D3, which he acknowledged to be the photograph taken when he was entering the bungalow in the year 1984. The photograph, fortuitously, captures the separate name plate of “R.N. GUPTA”. Thus, the existence of separate name plates at the gate in the year 1984 itself stands established.

Outhouses

82. Learned senior counsel submits that the Gupta family demolished and reconstructed the outhouses, falling in their portion. The Gupta family obviously, while carrying out construction, considered the portion/structures belonging to them exclusively. The existing outhouse falling in the portion of Gupta family at the time of purchase in 1983 was 800 sq. ft. and as per the site plan Ex PW-1/3, the dimension of the outhouse is given approximately as 900 sq. ft. After demolition and reconstruction, the Gupta family has increased it to 3000 sq. ft.
83. It is also admitted that Gupta family was booked by MCD for unauthorized construction of his outhouse. In fact, a demolition order was also issued by MCD.
84. The original file from MCD was also summoned by Jain family,



through its witness DW-4, Head Clerk, Building Department, MCD. This witness also brought and proved the Misalband Register for bookings of unauthorized construction (Ex DW-4/1), showing unauthorized construction of One Big Hall with RCC columns in 4 Cavalry Line by Sh. R.N.Gupta. This establishes that the MCD recognized the open areas on which Gupta family had made unauthorized construction, to be that of Gupta family and accordingly booked them individually for it.

Registered Sale Deeds

85. After the repeal of Act of 1976 in 1999, the erstwhile owners separately executed four Sale Deeds (Ex DW-1/25 to Ex DW-1/28) in favour of the Jain family, transferring their respective property portions to the Jain family, thereby finalizing their title as per the ATS dated 16.09.1983. These Sale Deeds were also proved by DW-3, the official from the office of Sub- Registrar.
86. The Gupta family registered their Sale Deeds on 15.11.2000 (Ex PW-1/D1 and Ex PW-1/D2), but they executed these deeds themselves based on a Power of Attorney and incorrectly included the phrase “*1/2 undivided share*” which did not align with the ATS. On the other hand, the Sale Deeds executed in favour of Jain family by the erstwhile owners show separate distinct area in possession of the Jain family.
87. Following the execution of the Sale Deeds, the Jain family amended their plaint to reflect their ownership of the North-Eastern portion of the property, as specified in the deeds. These deeds accurately described and conveyed the North-Eastern portion with all associated



rights and structures.

88. The Sale Deeds (Ex DW-1/25 to Ex DW-1/28) stipulate that earlier *vide* ATS dated 16.09.1983, the Jain family were handed over separate, distinct, specific, defined and independent half portion of the suit property.

The site plan

89. The site plan (Ex DW-1/1) is an integral part of ATS. The Gupta family has disputed the site plan propounded by the Jain family. The Gupta family has alleged that there was no red colour in the site plan. The Gupta family's submission in this regard is erroneous as both the ATS contain a specific stipulation that the suit property being conveyed was "*as delineated in the plan annexed (Annexure 'B') hereto and marked red in pencil*". Thus the submission of Gupta family is contrary to the documents (even his own ATS).
90. Further, the argument of Gupta family is contrary to Section 91 and 92 of the Indian Evidence Act, 1872 ("*Act of 1972*").
91. The Supplementary Agreement(s) executed in the year 1989, i.e. about 6 years after the ATS(s), confirmed the earlier ATS(s), and still nothing was done to correct the so called error.
92. The site plan of Gupta family (Ex PW-1/3), according to Gupta family, does not show the N-E and S-W sides, nor it show the mark in red pencil. The ATS, however, contains the term of delineation of the portion in red in the site plan. The Gupta family's plan is thus contrary to their own ATS. The Gupta family's answer that demarcation on the plan was to be made after determination of excess vacant land defies logic and remains unsubstantiated. This, in any case, establishes the



fact that the properties were indeed sold separately.

93. It remains inexplicable as to how the parties came into possession, occupied and lived for the past 41 years in separate N-E part and S-W part, without there being any delineation on the site plans, as being claimed by the Gupta Family. The parties have been living in their specified portion for the last more than 41 years.

The Concealment

94. The Gupta family has taken a stand that in the suit filed by the Jain family, the material facts have been concealed by not filing the other documents.
95. In this regard, learned senior counsel submits that the suit as originally filed by the Jain family, in the year 1992 was a suit simplicitor for perpetual injunction. For the purpose of such suit, the ATS alone was considered as the relevant document.

Tenant cannot seek partition

96. As regards the partition cannot be claimed by the sub-tenant, sub-lessees, learned senior counsel states that there is no bar on the tenants to divide/partition the tenanted property and the Perpetual Lease itself permits the division of the suit property which is a leasehold property.
97. With these argument, learned senior counsel prays for the dismissal of the suit filed by the Gupta family.

SUBMISSIONS ON BEHALF OF GUPTA FAMILY

98. Mr Sameer Vashishth, learned counsel appearing on behalf of the Gupta family refuting the above submissions advanced by the learned senior counsel appearing for the Jain family argues that the decision on all the material issues (except Issue No 3 in CS (OS) No 2069 of



1998) in both the suits will depend on the outcome of the argument that whether “Jain family” and “Gupta family” purchased the suit property on 16.09.1983 as divided, separate, distinct and independent of each other’s share.

99. He submits that the answer to the said question is in the “negative”. In support, he states as under:-

A) Restriction in Perpetual Lease Deed dated 15.02.1951

100. The Perpetual Lease Deed (Ex DW-5/2 (Colly)) is the principal document between the parties. The suit property being a leasehold property, both the families are bound by the terms of the said document. Clauses 4 to 8 puts an embargo to erect any construction other than the dwelling house erected without the previous consent of the Officer Commanding in Chief. It also restricts any alteration in the plan or elevation of the dwelling house without any consent of the Lessor.

101. He submits that Clause 8 of the Perpetual Lease cannot be read in isolation. Clauses No. 5, 6, 7 and 8 of the Perpetual Lease Deed are to be read together. Clause 8 cannot be given an interpretation that constructions in the suit property can be raised at any place as per the option/convenience of the lessees. Reliance is placed on ***Delhi Development Authority vs. Karamdeep Finance and Investment (India Pvt Ltd), (2020) 4 SCC 136*** to submit that the document must be scrutinized closely to find out the real intention of the parties.

B) Only super structure can be divided

102. It is submitted that the version of the Jain family that the suit property was purchased as divided and separate is not maintainable as the suit



property is a lease hold property and cannot be divided by metes and bounds. The parties are free to divide the superstructure, which was done by both the families. Reference is made to *Chiranji Lal & another vs. Bhagwan Das & Others, AIR 1991 Del 325*.

- 103.** He further submits that the Jain family has argued that the super structure also includes lawns and open areas. The said argument is incorrect. The meaning of “Structure” as per Black’s Law Dictionary is “any construction, production, or piece of work artificially built up or composed of parts purposefully joined together”.

C) Sale Deeds dated 25.01.2000 is inadmissible and even otherwise not proved in accordance with law

- 104.** Jain family during the pendency of the suit *via* amendment brought the fact on record that the Kalia family had executed Sale Deeds dated 25.01.2000 (Ex DW-1/25), Sale Deed dated 12.01.2000 (Ex DW-1/26), Sale Deed dated 08.03.2000 (Ex DW-1/27) and Sale Deed dated 18.02.2000 (Ex DW-1/28) in their favour. Jain family placed reliance on the recital of the Sale Deed which reads as under:-

“AND whereas on 16.09.1983 itself the owners had also handed over possession of the aforesaid entire part of perpetual lease hold land admeasuring 1752.285 sq.mt., including the aforesaid 182.035 sq.mt. of excess vacant land, together with the structure/buildings constructed thereon, which was, and is, the North-Eastern, separate, distinct specific, defined and independent half portion of the said property, (adjacent to 2, Cavalry Lines, Mall Road, Delhi)”



105. It is submitted that the abovesaid Sale Deeds are not admissible being executed “*Post Litem Motam*”. Reliance is placed on *State of Bihar vs. Radha Krishna Singh & Others, (1983) 3 SCC 118*.

106. Without prejudice to the above, he submits that the said document was created by the Jain family intentionally and purposefully. They are well aware of the fact that the ATS dated 16.09.1983 was for undivided land and it never contained words separate, distinct, specific, defined and independent half portion. On the basis of said Sale Deeds, the Jain family sought an amendment in the prayer which reads as under:-

“To grant a decree of declaration that the plaintiffs are owners in possession of the North Eastern half portion of the suit property bearing No.4 Cavalry Lines, Mall Road, Delhi as shown in red colour in the site plan annexed to this amended plaint, and the suit property stands divided/partitioned by virtue of the sale deeds’ detailed in para 2A above, and plaintiffs are entitled to deal with the same as such owners including by raising partition wall along the dividing line of the property on the ground floor, open space as also the terrace;”

107. Since there were discrepancies in the Sale Deeds and ATS, the burden to prove the contents of the Sale Deed were on the Jain family. Reliance is placed on *Jaswant Kaur vs. Amrit Kaur & Others, (1977) 1 SCC 369*. The Jain family failed to prove the same and also failed to produce any witness from the vendors to prove the contents of the alleged Sale Deeds.



108. It is submitted that mere proof of handwriting of a document would not tantamount to proof of all contents of facts stated in the document. The truth of the facts or contents so stated would have to be proved by admissible evidence and that is why evidence of the vendors were necessary who could have vouched safely for the truth of facts in issue. Reference is made to *Ramsunder Bhagat & Another vs Rambharosi Bhagat, 1956 SCC OnLine Pat 72* and *Ramji Dayawala vs Invest Import, (1981) 1 SCC 80, Para 16*. Thus, the said Sale Deeds have not been proved in accordance with law and no reliance can be placed upon them.

109. Jain family during arguments submitted that Gupta family got executed in their favour Sale Deeds dated 15.11.2000 which contained the words “undivided share”. As per Jain family, the word “undivided share” was nowhere used in the ATS dated 16.09.1983 the said introduction of the words in the Sale Deeds dated 15.11.2000 is sufficient to draw an inference that the suit property was purchased divided at the time in 1983. The said argument is a misconceived one. It was reiterated that various clauses of Lease Deed clearly suggest that the property was an undivided one and therefore the contents of the Sale Deeds dated 15.11.2000 in favour of Gupta family was correct and proved.

D. Sale Deeds are of Leasehold rights and not absolute rights

110. Learned Counsel submits that the subsequent Sale Deeds (Ex DW-1/25 to Ex DW-1/28) were only regarding lease hold rights of the suit property and cannot be with regard to the absolute rights. Reliance is placed on *Delhi Development Authority vs Karamdeep Finance and*



Investment (India Pvt Ltd), (2020) 4 SCC 136.

E. Nature of Property

- 111.** It is further submitted that the suit property was a Lease hold property. It was always identified as 4, Cavalry Lane, Mall Road, Delhi and was a single bungalow built on land ad-measuring 0.866 acres. The Military Estate also considered the said property always as one and even when the same was leased out to both the families, the same was considered as a single unit. The same is evident from Letter/Order dated 03.05.2000 passed by Military Estate. Post execution of the Sale Deeds, Jain family applied for mutation of their half portion which was rejected by the Military Estate *vide* Order dated 03.05.2000 (Ex DW-1/P-2).

F. Salient Features of Documents dated 16.09.1983 and 04.03.1989

- 112.** Relying on ATS (Ex PW-1/1) and Supplementary Agreements (Ex PW-1/4, Ex P-9, Ex P-11), he further submits that no where it is mentioned about the sale of any divided, specified separate and independent share, by any of the four vendors in favor of the parties to the present suit. Further the ATS in favour of both the families were executed in respect of two equal undivided half shares. GPA dated 16.09.1983 (Ex PW-1/2) was executed in favour of plaintiff No. 1 and defendant No. 1 jointly to deal with the suit property and not for any specified or a separate share.
- 113.** As regards the site plans of Jain family showing their portion in red colour, it is argued that the same is forged and fabricated. Further, the phrase “*marked in red*” has been picked up from the Perpetual Lease Deed dated 15.02.1951 (Ex DW-5/2 (Colly)) and Sale Deed of 1960



(Ex DW-5/1).

- 114.** The fact that the suit property was undivided is evident from the fact that the suit property had an excess vacant land of 364 sq. mtrs. which was not divided and no specifications was mentioned in any of the agreements as to which portion of excess vacant land would fall to the share of which party.
- 115.** The nature of the suit property being an undivided one is also established from the fact that there was a tenant/unauthorized occupant in the suit property by the name of Ms. Mallo Devi (Clause TT in both the ATS). Both the families were given a right to seek her eviction from the suit property. Had the property' been divided, a specific vendee would have got the tenancy rights.
- 116.** Vide another set of documents i.e. Supplementary Agreement dated 04.03.1989 (Ex PW-1/4 (also Ex P-7), Ex P-9, Ex P-11), of the same day, which were executed by Smt. Veena Bhalla & others, the contents of ATS dated 16.09.1983 were confirmed. Had there been any partition in 1983, it could have been so stated in the Supplementary Agreement.
- 117.** On 16.09.1983, when the suit property was transferred, a possession letter (Ex PW-1/5) was also executed by all four brothers and sisters and the recital of which clearly establishes the version of the Gupta family that the entire possession of the suit property was handed over to the plaintiff No. 1 and defendant No. 1. No such recital appeared or was conveyed by the erstwhile owners that they were handing over separate, specified, specific and divided portions to their respective owners including separate lawns and common spaces.



G. Site Plans attached with Agreements to Sell dated 16.09.1983

- 118.** It is submitted that much of the emphasis was given to the Site Plan (Ex DW-1/1). As per the Jain family, the vendors demarcated their portion in the suit property in colour red on the site plan and this shows that suit property was acquired by Jain family separate and distinct. Further, along with the ATS of “Guptas”, Site Plan (Ex PW-1/3) was also executed by the vendors. No demarcation of any portion was made in the Site Plan. The said site plan was signed by all the four Vendors.
- 119.** Jain family tried to demonstrate that it is not possible to remove any line or colour from a paper as it will leave marks on rubbing. However, red colour can easily be filled in the site plan. It is not the case of Jain family that the site plan (Ex PW-1/3) was forged and fabricated. Further, all the documents of 1983 were executed simultaneously. Had there been any discrepancy in the documents, Jain family would have immediately pointed the same or at the most in 1989 when the Supplementary Agreements were executed.

H. Brick Wall in the property does not partition the Suit Property

- 120.** Para 10 of the written statement filed by the Gupta family in CS (OS) 2069/1998 reads as under:-

“10. It is submitted that the properties could not be made separate and distinct unless it was determined by the competent authority as to which portion of 4 Cavalry Lines, Mall Road, Delhi, will be taken possession by the Competent Authority as excess land. It is denied that any boundary wall was partly constructed, As a matter of fact,



the alleged wall was constructed only in the lawns in order to bring the lawns in one level. It will not be out of place to mention here that the slope of the lawn was towards existing bungalow No. 2 and the water used to accumulate towards North East side. The wall was never constructed with the purpose of laying any dividing line between the property.”

121. The suit property was never acquired by both the family in a divided manner in the year 1983. Had it been acquired in a divided manner, the partition wall, if legal, would have been erected then only. Mr. Ashok Jain has admitted in his cross-examination that *“the said demarcation boundary was constructed later on. This was constructed in the year 1991”*.

122. Reliance is further placed on para 21 of the plaint filed by the Jain family in CS (OS) 2069 of 1998 which reads as under:-

“That the plaintiffs are legally entitled to complete the boundary/purdah wall which, is under completion at present. It is submitted that the said wall is entirely located inside their premises and the defendants have no right or title to and in the ground on which the same exists. Moreover, its completion will cause no harm to the defendants.”

123. A perusal of the above para shows that the purdah wall is built inside the portion of Jain family. Thus the entire version of Jain family that the purdah wall divides the suit property is farce and is an incorrect submission.

124. Jain family relied upon a report of Local Commissioner dated



30.01.2008, which stated that a brick wall runs to the middle of the lawn and verandah had a black line running down the middle of floor. Gupta family filed objections to the said report *vide* I.A No. 5093 of 2008. *Vide* Order dated 21.11.2008, this Court did not accept the said report on its presentation and permitted Jain family to prove it in evidence and liberty was given to Gupta family to cross-examine the Local Commissioner in evidence. Jain family never proved the said report in evidence.

Argument on Issue No. 3 framed in CS (OS) No. 2069 of 1998:
Whether the plaintiff has concealed the material facts as alleged by the defendants. If so to what effect? OPD

- 125.** Mr Vashishth submits that the suit filed by the Jain family be dismissed on the ground of concealment of facts.
- 126.** The reading of the entire plaint would demonstrate that Jain family completely and clearly concealed the principal Perpetual Lease Deed dated 15.02.1951, Sale Deed dated 29.11.1960, GPA dated 16.09.1983, Supplementary Agreements and GPA dated 04.03.1989.
- 127.** Jain family stated that there was no necessity for them to disclose the above said documents as the suit was for injunction only and ATS dated 16.09.1983 would have sufficed for the said issue. Further, the disclosure of facts and documents are to be seen as per the perspective of the plaintiff i.e. Jain family and not as per the Gupta family.
- 128.** He submits that the suit filed by the Jain family was not a simplicitor suit for Permanent Injunction. Jain family had also prayed for the relief of “Declaration”. Hence it was not correct on the part of Jain family to have argued that they had filed the suit only for seeking



relief of injunction.

129. Without prejudice to above, it is submitted that withholding of the vital material fact from the Hon'ble Court amounts to playing fraud with the Court. Reliance is placed on *Hillcrest Realty SDN. BHD vs Hotel Queen Road Pvt Ltd, 2009 (3) AD (Delhi) 541 (DB)* and *K.D. Sharma vs Steel Authority of India Limited & Other, (2008) 12 SCC 481*.

130. In view of the submissions advanced, the Gupta family prayed for the dismissal of the suit filed by the Jain family.

ANALYSIS AND FINDINGS

131. I have heard the rival submissions advanced by the learned counsels for the parties and have gone through the documents and evidence of the parties.

132. Before deciding the controversy between the parties issue wise, I shall first decide that whether the suit property is divisible or not. If the answer to the said question is in affirmative, then I shall proceed to decide whether the suit property purchased by both the families on 16.09.1983 was separate, distinct and demarcated and thereafter, the other issues.

133. The fountain head of the rights of both the families emanates from the parent document i.e. Perpetual Lease Deed dated 15.02.1951. The original Perpetual Lease deed was produced by DW5/Naveen Ganda and is exhibited as (Ex DW-5/2 (Colly)). The relevant clauses of the said Perpetual Lease deed are extracted below:-

“(1) To pay unto the Lessor the yearly rent hereby reserved on the days and in the manner hereinbefore appointed,



(2) From time to time and at all times to pay and discharge all rates taxes charges and assessments of every description which are now or may at any time hereafter be imposed charges or assessed upon the premises hereby demised or the buildings to be erected thereupon or the landlord or tenant in respect thereof.

(3) Not to cut down any of the timber fruit-trees or other trees now or at any time hereafter growing on the premises hereby demised without the consent in writing of the Military Estates Officer but to preserve the same in good order.

(4) Not to make any excavations in the Land hereby demised or remove any minerals mineral substances of any description sand or clay from the said land without the consent of land in accordance with the terms and conditions prescribed by the Military Estates Officer.

(5) Not to erect or suffer to be erected on any part of the premises hereby demised, any building other than and except the dwelling house already existing as described in the second schedule to the lease and shown in the plan accompanying the lease covenanted to be erected without the previous consent in writing of the Officer Commanding-in-chief of the Command.

(6) Not to make any alterations in the plan or elevation of the said dwelling house without such consent as aforesaid nor to use the same or permit the same to be used for any purpose other than that of a dwelling house.

(7) At all times to keep the said dwelling house and premises



in good and substantial repair and on the determination of this lease peaceably to yield up the same in such good and substantial repair unto the Lessor.

(8) Upon every assignment transfer or Sub-lease of the premises hereby demised or any part thereof or within one calendar month thereafter to deliver a notice of such assignment transfer or sub-lease to the Military Estates Officer setting forth the names and description of the parties to every such assignment transfer or sub—lease and the particulars and effect thereof.”

(Emphasis added)

- 134.** Jain family while relying on Clause 8 submits that the suit property is divisible whereas the Gupta family submits that the clause 8 cannot be read in isolation and the whole intent of the document is to be looked into from which it would be evident that the suit property was indivisible.
- 135.** A perusal of the Perpetual Lease Deed shows certain restrictions imposed upon the lessee. To my mind, the restrictions imposed upon the lessee are with regard to alteration or elevation of the dwelling house. As per Clause 8 quoted above, the requirement is of informing the Military Estate Officer of every assignment, transfer or sub-lease of premises or any part thereof meaning clearly that the lessee could sub-lease a portion of the entire leased premises and the only requirement was to inform the Military Estate Officer. There is no restriction in the Perpetual Lease deed regarding dividing, subdividing, partitioning the suit property in any manner. Had this been



the intention of the lessor that the suit property cannot be divided, it would have been so laid down in the Perpetual Lease deed. If it is to be held that the above clauses impose a restriction on the division of the suit property then the words “*assignment transfer or sub-lease of the premises hereby demised or any part thereof*” appearing in Clause 8 of the Perpetual lease deed will become nugatory and will be meaningless. The same cannot be accepted.

136. In addition, reliance is placed on *Sappani Mohd. Mohideen v. R.V. Sethusubramania Pillai, (1974) 1 SCC 615* and more particularly on paragraph 23 which read as under:-

“23. Whether the endowment is absolute or partial, primarily depends on the terms of the grant. If there is an express endowment, there is no difficulty. If there is only an implied endowment, the intention has to be gathered on the construction of the document as a whole. If the words of the document are clear and unambiguous, the question of interpretation would not arise. If there be ambiguity, the intention of the founders has to be carefully gathered from the scheme and language of the grant. Even surrounding circumstances, subsequent dealing with the property, the conduct of the parties to the document and long usage of the property and other relevant factors may have to be considered in an appropriate case. As pointed out earlier, we have a document in the instant case where there is an express endowment of certain specified properties as recited in clause 8 of the deed. Significantly, there is complete



omission to create an absolute endowment of the property in the ninth schedule although the same is referred to in clause 9 of the deed and has been dealt with in a very special manner therein. There is absolutely no doubt on the terms of clause 9 read with the other material provisions of the deed that there is no absolute endowment of the suit property in favour of the Temple or for the charities as claimed by the plaintiffs/respondents. We may, however, add that the conclusion we have reached from the intrinsic evidence of the document itself is reinforced by the subsequent conduct of the parties and the various transactions effected from time to time with regard to the suit properties. To boot, it is far from a case where the entire income of the property has been endowed to the trust to sustain a conclusion that the entire corpus belongs to the trust.”

(Emphasis added)

- 137.** On perusal, the abovesaid clauses and more particularly clause 8 are clear, simple and plain. Hence, no external aid is required for interpreting the terms and conditions of the Perpetual Lease Deed dated 15.02.1991.
- 138.** The same is also evident from the letter dated 04.12.1991 (Part of Ex DW-6/1) that the DEO had full knowledge of the fact that the suit property was sub-divided between the Gupta and Jain family and no coercive steps were taken by the principal lessor for any violation of the terms of the Perpetual Lease deed. The said conduct of the DEO clearly shows that the suit property was capable of being sub divided.



For the sake of perusal, the relevant portion of the said letter reads as under:-

“5. Even though sale deed has not been executed as far but the lease hold rights stand transferred and mutation effected by the DEO. The premises stands already sub-divided. The request of Sh. Ashok Jain for erecting a boundary wall in our opinion, may not be legally tenable but administratively we have no enforceable legal authority to evict the existing lessees whose rights have been fully recognized by the DEO i.e. are charging lease rent independently and separately from both the parties. The sites have already been demarcated on the ground upto plinth level but now Shri Jain has sought the permission to raise a boundary wall upto a reasonable height as permissible under the rule.”

- 139.** Hence, I am of the view that the Perpetual Lease deed does not put any restrictions/embargo on the division of the suit property.
- 140.** The next question which requires answer is whether the suit property when sold to both the families was divided into two equal shares and then sold or equal undivided rights in the suit property were sold.
- 141.** On 16.09.1983, one ATS was executed in favour of the Gupta family (Ex PW-1/1) alongwith Site Plan (Ex PW-1/3) and the another ATS was executed in favour of Jain family (Ex P-13) along with Site Plan (Ex DW-1/1). On the same day, GPA (Ex PW-1/2) was executed in favour of plaintiff No. 1 and defendant No. 1, Power of Attorney (Ex P-2) was also executed in favour of plaintiff No. 1 and defendant No. 1, Indemnity bonds in favour of Gupta family (Ex P-3 to Ex P-6),



Indemnity bonds in favour of Jain family (Ex DW-1/30 to Ex DW-1/33) were also executed along with possession letter (Ex DW-1/P3).

142. The dispute between both the families is that the Gupta family argues that no specific area was allotted in the suit property as per their site plan (Ex PW-1/3) while on the other hand, Jain family argues that the separate site plan (Ex DW-1/1) alongwith their ATS was executed indicating the portion of Jain family in red colour.

143. The contents of both the ATS executed in favour of Gupta and Jain family respectively are not in dispute. It is only the site plans annexed with the ATS which are disputed. It is pertinent to refer to Clause 1 of the ATS which is identical in both the ATS. The said clause reads as under:-

“1. Subject to the and upon the terms and conditions herein contained the Vendors shall sell and the Vendees shall purchase the price of Rs. 6 lakhs (Rupees Six lakhs only) free from all encumbrances mortgage, charges and liens whatsoever all that part of the plot of perpetual lease hold land bearing No. 4 Cavalry Lines, The Mall, Delhi containing by admeasurement an area of 1570.25 sq. mtrs. together with the building constructed on the said part of the land situated in Kingsway (outside cantonment of Delhi) fully described in the schedule written hereunder and as delineated in the plan annexed (Annexure ‘B’) hereto and marked red in pencil, hereinafter referred to as the said premises.”

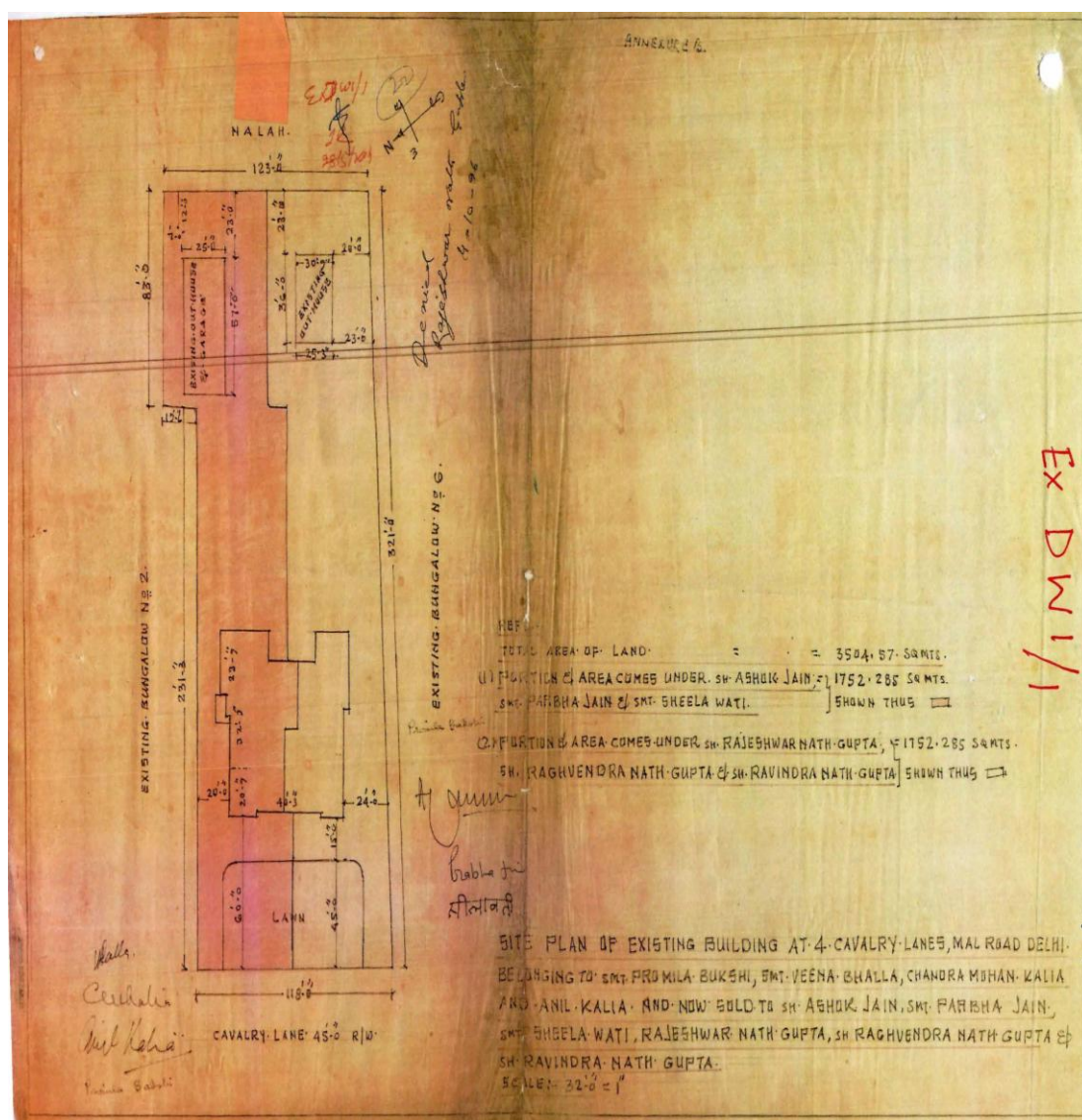
(Emphasis added)



144. On perusal of the said clause, the phrase “marked red in pencil” indicates that the site plan i.e. Annexure-B annexed with the ATS contains the area/portion in red colour.

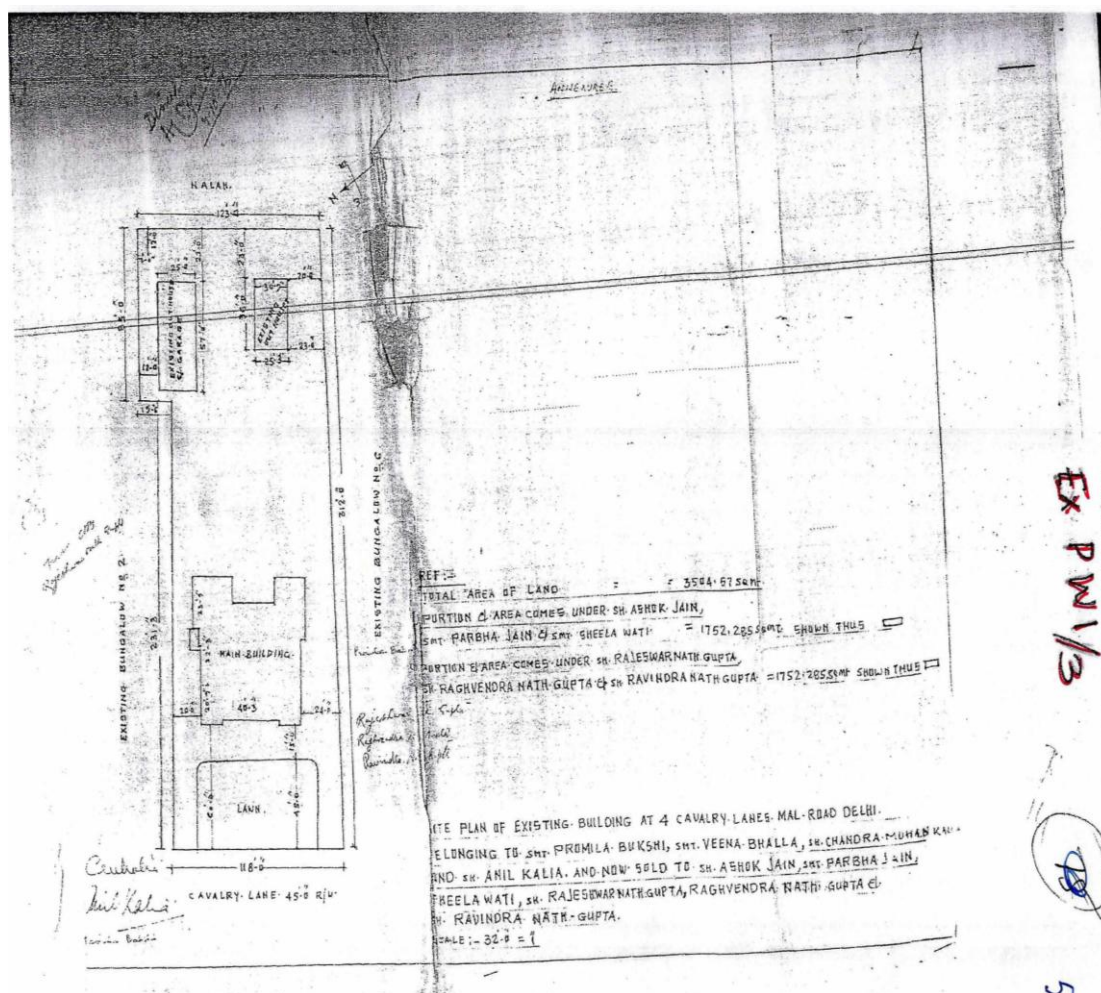
145. For the sake of convenience, both the site plans annexed with respective ATS are reproduced below:-

Site Plan of Jain Family (EX DW 1/1)





Site Plan of Gupta Family (Ex PW-1/3)



146. A perusal of the site plan of the Jain family i.e. Ex DW-1/1 shows that the area sold to the Jain family is marked in red colour. On the other hand, the site plan of the Gupta family i.e. Ex PW-1/3 does not show any marking in red colour. The site plan of the Jain family is in consonance with the phrase “*marked red in pencil*” contained in both the ATS. Therefore, I have no reason to disbelieve the site plan of the Jain family.
147. Assuming for the sake argument that the site plan of the Gupta family is accepted, then the intention of the contracting parties to the ATS of



the Gupta's family by putting the phrase "*marked red in pencil*" will be redundant/meaningless.

148. The Gupta family has taken a defense that at the time when the ATS were executed, there was a bar by virtue of section 10 of Act of 1976, and hence, no specific portion could be delineated in the site plan as the excess vacant land of 364.07 sq. mtrs. was not demarcated in the suit property. Thus, as per the Gupta family, it is for this reason the site plan (Ex PW-1/3) annexed with the ATS of Gupta's family was without any marking in red.

149. The said argument is meritless.

150. Section 10 of Act of 1976 is extracted below:-

"10. Acquisition of vacant land in excess of ceiling limit. (1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that- (i) such vacant land is to be acquired by the concerned State Government; and (ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed."

151. The said section talks about the acquisition of the vacant land in excess of the ceiling limit. The said section does not say that the



excess vacant land has to be demarcated. It does not lay down a condition that unless the excess vacant land is demarcated, the subject property cannot be divided. Further, under the said section, the excess vacant land is not required to be cordoned off or there is any restriction that it cannot be utilized by either of the parties (till that land is acquired), there is no restriction in enjoyment of the excess vacant land. The order dated 30.08.1979 passed by the Competent Authority holds that 364.07 sq. mtrs. out of 3504.57 is the excess vacant land. In this regard, the evidence of DW-1 reads as under:-

“..... The excess vacant land in the suit property was 364.07 square meter as held by the competent authority. The competent authority had declared the aforesaid area to be in excess somewhere in the year 1979. I do not remember if I have with me the order of the competent authority to the aforesaid subject. I might have read the order. I have no idea if any site plan indicating the excess area was demarcated in the form of a site plan and the same formed part of the order. The excess area land is never demarcated. It is correct that in the year 1983, when the suit property was purchased no excess area was separately allotted either to myself or to the plaintiffs. (Vol.) .. In the agreement it was stated that in the event of the excess land being acquired by the competent authority then half of the excess land so acquired on the basis of the entire property would be deducted from the area of 1752.285 square meter agreed to be sold to me.....”



(Emphasis added)

152. The same is also clarified from the ATS executed in favour both the families. Relevant clauses of the ATS are extracted below:-

“FF. AND WHEREAS the notification under section 10(1) of the ULCAR Act is yet to be issued by the said competent authority.

II. AND WHEREAS pursuant to the order of the Competent Authority mentioned at para EE above, the Vendors are now holding and are at liberty to sell and dispose off the said land with bungalow and outhouses etc. admeasuring 3140.50 sq. mtrs. excluding an area of 364.07 sq. mtrs. determined as excess vacant land by the Competent Authority.

JJ. AND WHEREAS the Vendors a have agreed with the Vendees to assign all the less's rights, and the structures on the land measuring 1752.285 minus 182.035 (half of excess vacant land i.e. 364.07 sq. mt.) equal to 1570.25 sq. mt. (hereinafter referred to as the said 'premises') free from all encumbrances, mortgages, charge, gift, litigation, dispute, attachment in the decree of any Court, Court Injunctions, land acquisition etc. and liens whatsoever and upon the terms and conditions hereinafter contained, for the total price of Rs. 6.0 lacs.

KK. AND WHEREAS if the excess vacant land as declared by the Competent Authority and as referred to in para EE above of this deed, is ultimately acquired under the ULCAR



Act, 1976 only half of the vacant land so acquired on the basis of the entire holding, shall be deducted from the land admeasuring 1752.285 sq. mt. being now demised by the Vendors to the Vendees.

LL. AND WHEREAS in case the excess vacant land as declared by the Competent Authority and as referred to in para EE above of this deed, is exempted under Section 20 of the ULCAR Act, 1976 the Vendors shall transfer the same in favour of the Vendees by way of a deed of transfer or any other documents as may be suggested by the Vendees at no extra costs.

MM. AND WHEREAS if it is held under the provisions of the ULCAR Act, 1976 that there is no excess vacant land then the Vendors shall transfer the entire land admeasuring 1752.285 sq. mts. to the Vendees without any additional costs.”

153. The documents clearly suggest that even though ATS was for an area of 1572. sq. mtrs., the parties were put in possession of the complete area including excess vacant land with clear understanding that in case, if the excess vacant land was not acquired, the parties would be entitled to the benefit of balance area i.e. without any extra cost. The above mentioned clauses also show that the excess vacant land was not identified and if required, the same would be recovered subsequently.

154. In addition to the above, there are other factors based on preponderance of probabilities which persuade me to hold that the suit



property was divided.

155. There is no doubt that civil suits, in addition to pleadings, document and evidence of parties are also to be decided on the principle of preponderance of probabilities. The Hon'ble Supreme Court in **N.G. Dastane (Dr) v. S. Dastane, (1975) 2 SCC 326** has observed as under:-

“24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when 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. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make



but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: “the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue; or as said by Lord Denning, “the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear”. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.”

156. In the present case, the super structure of the suit property was divided and both the families were in respective use and enjoyment of their respective portions i.e. North East side by the Jain family and South West side by the Gupta family. The division of the super structure is reflected from the site plan (Ex DW-1/3) annexed with the ATS of the Jain family.

157. The same is admitted by PW-1 in his evidence by way of affidavit and the relevant extract reads as under:-

“9. That I say that in the aforesaid bungalow/suit property, there is a lawn in the front, Centre and a lawn in the rear. In front of the bungalow, there is the main building and at the rear along with the boundary wall, there are outhouses.



After having taken possession of the bungalow/suit property from the vendors on 16.9.83, the plaintiffs took possession of approximately half of the constructed area for their residence and enjoyment on the South-West side while the defendants took possession of the other half of the constructed area on the North-east side of the bungalow. Similarly, the outhouses situate on the South-west were taken possession of by the plaintiffs and the outhouses/garages situate on the Northeast side were taken possession of by the defendants. All other areas such as gates (IN & EXIT), driveways/paths/passages/lawns and verandahs etc. were kept joint and common for joint and common use and enjoyment. It was also agreed that these said area/portions would be kept joint and common for common use, benefit and beneficial enjoyment thereof, fully by both the parties (plaintiffs and defendants) and also for keeping and maintaining the environment and beauty and oneness of the bungalow/suit property.....”

(Emphasis added)

158. Further, there is an outhouse which is shown in the occupation of the Gupta family as per the site plan of the Jain family. The said outhouse at the time of ATS comprised of 900 sq. ft. which was subsequently increased to 3010 sq. ft.. This clearly shows that the Gupta family carried out additional construction for their better use and enjoyment in their portion of the suit property. In this regard, the evidence of PW1 reads as under:-



“Q. Please see the photograph Ex. P1/8E and is it correct that this photograph shows the outhouse of the defendant at point X and outhouse of the plaintiff at point Y in the background?”

A. I have already answered that the photographs are of old outhouses and there have been change in the outhouses and as such I cannot identify the same.

.....

Q. Please see the photographs mark D1 and D2 and is it correct that the buildings in the said photographs are of the outhouse of the plaintiffs as they existed in October, 1991? (Objection is taken by the learned counsel for the plaintiff to the question on the ground that the documents are inadmissible and have already been denied).

A. I cannot identify the outhouse as the outhouse have been renovated many times and the photograph is an old photograph.

Q. What was the area of the plaintiff's outhouse at the time of exhibition of document Ex. PW1/1?

A. The outhouses were existing at that time but I do not know the area.

Q. I put it to you that the area of the plaintiff's outhouse at the time of execution of document Ex. PW1/1 was 800 sq. ft.?

A. It is incorrect.

Q. kindly see the site plan Ex. PW1/3 and answer about the



exact area of the plaintiff's outhouse shown in the site plan?

A. The site plan shows only the single storey of the outhouse although the same is double storey and even the covered area of the outhouse has not been shown completely. It shows the area as about 800/900 sq. ft.

.....

Q. I put it to you that there was no second storey in any of the outhouses in the suit property at any point of time?

A. It is incorrect.

Q. What is the area of your outhouse at present?

A. I do not know the exact area but the same may be more than 1500 sq. feet.

Q. I put it to you that the said area is 3010 sq. feet?

A. It may be correct as the outhouses had been renovated many times with the consent of all the co-owners”

159. The said additional construction by the Gupta family on inspection by MCD was declared as unauthorised construction which is clear from Ex DW-1/7. From Ex DW-1/8, it can be seen that MCD issued a notice under section 344(1) and 343 of Delhi Municipal Corporation Act, 1957 to show cause as to why demolition action should not be carried out. Further, these notices were addressed to the Gupta family only. By considering these facts, it is clear that the Gupta family treated this portion as distinct, separate and hence were carrying out construction in their own portion of the suit property.

160. With regard to the Mutation letters, learned Counsel for the Gupta family argues that the reliance of Jain family is misconceived as no



area is demarcated in the Mutation Letters (Ex P-12 and Ex DW-1/2).

161. On perusing the Mutation Letters dated 10.06.1985, it is stated that 1752.285 sq. mtrs. in the suit property had been mutated in favour of Gupta family and Jain family respectively. It is correct that these mutation letters do not specify any portion but at the same time mutation is only a document meant for the purpose of revenue record.

162. The Hon'ble Supreme Court in *P. Kishore Kumar v. Vittal K. Patkar*, **2023 SCC OnLine SC 1483** has held as under:-

“12. It is trite law that revenue records are not documents of title.

13. This Court in Sawarni v. Inder Kaur, [(1996) 6 SCC 223], held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.

.....

15. In Jitendra Singh v. State of Madhya Pradesh, [2021 SCC OnLine SC 802], this Court after considering a catena of judgments, reiterated the principle of law as follows:

*“6. ***mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose.”*

163. The evidence on record shows that both the families were paying lease rent separately. Jain family has placed eight lease rent receipts from 1985 to 1992 which are exhibited as Ex DW-1/3 (Colly) showing that



the Jain family had paid lease rent separately from 1985 to 1992 till the mutation was cancelled.

164. Further, DW-6 who was then in the Office of Defence Estates Officer produced the cash book record which is Ex DW-6/1 (Colly), on perusing, the entries of made by the officer shows that separate lease rent of their respective portions were paid by both the families.

165. The evidence of PW1 in this regard reads as under:-

“Q. Are you paying the lease rent of the suit property?”

A. The lease rent was being paid jointly probably upto 1992-93 and thereafter the Defence Estate Office corrected the mutation of the property in the name of six co-owners and I am paying the lease rent on behalf of all the owners. I do not remember the exact amount of the lease rent being paid by me from 1985 to 1993 but the receipts of the payments made by me are available.

Q. I put it to you that you used to pay half of the lease rent of the suit property prior to 1993?

A. It is correct that half of the lease rent was paid but the same was regarding undivided property and because it had been purchased jointly.

Q. I put it to you that the receipts of the lease rent for the period of 1985 to 1993 have not been placed on record as they were issued separately for your portion?

A. It is incorrect.”

166. From the above, I am of the view that if the suit property was undivided and jointly held by both the Gupta and Jain family, the



correct procedure would have been one joint mutation letter, joint lease rent receipts in favour of Gupta and Jain family wherein lease rent would have been equally paid by both the families. However from the present facts, the separate rent receipts and separate mutation letters shows that the suit property was divided.

167. The Defense Estates Officer *vide* Order dated 06.08.1993 cancelled the mutation allotted in favour of both the families on the ground that the Sale Deeds were not produced.
168. The fact remains that if there was no partition/division in the suit property then there was no reason to issue two separate mutation letters to both the families. Further, there was no reason to pay the separate lease rent.
169. As already noted above, the letter dated 04.12.1991 (Part of Ex DW-6/1) clearly notes that the suit property was divided by both the families and lease rent was being paid separately.
170. A joint possession letter dated 16.09.1983 (Ex PW-1/5/ Ex DW-1/P-3) was also executed by the erstwhile owners in favour of the plaintiff No. 1 and defendant No. 1.
171. Gupta family has argued that the entire possession of the suit property was handed over to both the families and no separate or distinct portion was handed over to either of the families. On the other hand, Jain family has questioned the execution of the said letter and states that the said letter is sham and manipulated document.
172. It is relevant to extract the cross examination of DW-1 in this regard, wherein he states as under:-

“It is correct to say that along with the agreement to sell, a



general power of attorney dated 16.09.1983, power of attorney dated 16.09.1983 and indemnity bond dated 16.09.1983 were also executed by the children of Sh. and Smt. Kalia. It is correct that I and Sh. Rajeshwar Nath Gupta were together appointed as power of attorneys by the children of Mr. and Mrs. Kalia. It is incorrect to suggest that a possession letter was given. It is further incorrect to suggest that a possession letter dated 16.09.1983 was given jointly to me and Sh. Rajeshwar Nath Gupta. (Vol.). Possession was handed over in terms of agreement to sell. I cannot identify the four signatures on the possession letter dated 16.09.1983 which is Ex.PW-1/5. Mark 'A' as the same were not signed in my presence. I have gone through the contents of the perpetual sublease dated 1951. The property in the perpetual sublease dated 1951 is demarcated as per the schedule annexed with Ex.PW-1/11. It is wrong to suggest that the demarcation of perpetual subleased dated 1951 and the schedule to the agreement dated 1983 is same.”

173. DW-1 during his cross examination admits that all the documents were executed except the joint possession letter on the ground that the said letter was not signed in his presence.

174. On perusing the said letter, it states as under:-

“we have handed over the physical and constructive possession of the entire 4 Cavalry Line, The Mall, Delhi to serve Sh. Rajeshwar Nath Gupta and Sh. Ashok Jain today



the 16th day of September, 1983.”

175. The said letter does not bear the signature of either of the plaintiff No. 1 and defendant No. 1. Furthermore, the said letter is also not signed by any of the witnesses except by the erstwhile owners. Had this letter been executed on the same date, on which all other documents were executed, then why the said letter was not signed by the plaintiff No. 1 and defendant No. 1 alongwith the witnesses when all other documents were signed and executed. There is no explanation to this effect by the Gupta family.

176. Even assuming for the sake of argument that the said letter was validly executed, even then also the said letter does not uses the word “undivided”. The word “undivided” would be a conscious omission, as the suit property pursuant to the ATS was already divided.

177. Hence, the argument of the Gupta family is rejected.

178. Further, Clause 8 of Joint GPA (Ex PW-1/2 (Colly)) reads as under:-

“8. To do all acts and things which our said attorney considers necessary or advisable for sub-dividing the said property so as to separate the vacant land and make into separate building plots or plots to extend and develop the built up portion of the said land and to develop the vacant land and for the above purposes to do all things which my said attorney may consider necessary or advisable.”

179. A perusal of the GPA shows that in paragraph 4 it talks about the ATS dated 16.09.1983. Hence the word “sub-dividing” appearing in clause 8 would further mean that the Gupta and Jain family were free to further sub divide their respective portions.



180. With regard to Indemnity Bonds, it is stated by both the families that separate Indemnity Bonds were executed alongwith the ATS. On perusing the Indemnity Bonds given by the erstwhile owners in favour of the Gupta family (Ex P-3 to Ex P-6) and in favour of Jain family (Ex DW-1/30 to Ex DW-1/33), it mentions “*one half portion of the said land i.e. land admeasuring about 1570.25 sq. mtrs.*” Had the suit property been undivided, the said phrase would have been missing. The relevant para is extracted below:-

“And Whereas I have entered into an Agreement for Sale one half portion of the said land i.e. land admeasuring about 1570.25 sq. mtrs. alongwith building, outhouses and other constructions thereon to the Vendees”

181. After 6 years from the execution of the ATS, the Supplementary Agreement’s reconfirmed the ATS and were executed by the erstwhile owners to receive the balance consideration amount left out in the earlier ATS. Supplementary Agreements dated 04.03.1989 were executed in favour of Gupta family (Ex PW-1/4, Ex P-9 and Ex P-11) and in favour of Jain family (Ex D-5, Ex D-6, Ex DW-1/4). It mentions that “*for the Sale of 1752. 285 Sq. metres minus 182.035 (half of excess vacant land) equal to 1570.25 sq. metres from and out of plot commonly known as 4, Cavalry Lines, Mall Road, Delhi*”. This makes it clear that the separate portions were sold to both the families as these Supplementary Agreements do not use the word “undivided”. Had the suit property been undivided, the word “undivided” would have been found in the Supplementary Agreements.

182. With regard to two separate gates, on perusing the photographs Ex



PW-1/D3, PW-1 in his cross examination has admitted that these photographs were taken in the year 1984 i.e. post execution of ATS dated 16.09.1983. Further, it clearly captures that name of Gupta family as “R.N. Gupta” which indicates that the Gupta family treated their portion as separate and distinct. The relevant portion is extracted below:-

“Q. Please see the photograph Ex. PW1/D3 and confirm whether the same is your family photograph taken when you were entering the bungalow in the year 1984? (The negative of the said photograph is also taken on record and the same is marked as Ex. PW1/D4).

A. Yes.”

183. Further, DW-1 in his cross examination has stated that *“It is correct that there are two gates in the property and on the both gates, the address of the property is inscribed to be 4, Cavalry Lines.”* It is clear that there are two separate gates and both the families treated their portion as separate and distinct. Hence, by the conduct of parties, it can be said that the both the families treated their portions as separate and distinct as there is no explanation as to why one gate has the name plate of only “R.N. Gupta”. Admittedly, both the families have been in their respective use and enjoyment of the constructed portion for the last more than 41 years.

184. In view of the aforesaid facts and based upon the preponderance of probabilities, I am of the view that suit property when sold to the Gupta and Jain family was divided into two equal shares i.e. South West portion to the Gupta family and North East portion to the Jain



family.

- 185.** Now coming to the core issue which led to the filing of the present suits is the erection of the purdah wall by the Jain family.
- 186.** It is an admitted case of both the parties that the purdah wall (3 feet deep, about 2 ½ ft. wide at the base and the wall tapering to 9 inches at the top and about 4-8 inches above the ground) is existing.
- 187.** It is stated by the Jain family that the purdah wall is in their portion and was constructed somewhere in June, 1991 for their enjoyment of the suit property. In July 1991, part boundary wall was constructed in the lawn and a demarcation line was engraved through the suit property in accordance with their site plan and demarcated with black paint. Further, the said boundary wall and the demarcation line was carried out at their expense. When the Jain family again resumed the work, Gupta family created obstacles due to which the said work could be not be completed.
- 188.** The Gupta family relying on para 19 of the plaint in CS (OS) 1300/1992 contended that the purdah wall was not erected for the demarcation or dividing the suit property but was erected for the purpose of preventing the siltage and erosion of soil in the suit property.
- 189.** By the said fact, it is an admitted position that the purdah wall was existing. The affidavit of evidence of PW1 in this regard reads as under:-

“9.....That it is also pertinent to submit about the nature and topography of the suit property. The level and contour of the suit property is markedly uneven and there is a



pronounced slope from the South-West side towards North-East side. Even the road Cavalry Lines in front of the bungalow has a marked slanting slope South-West side to North-East side. The South-West side is on a higher level/plane than the North-East side, the effect of which is that on watering the lawns and other open spaces or whenever there is rain, the water flows down from South-West side to North- East Side causing siltage and erosion of earth/soil - resulting into damages of the lawns and, other open spaces in the bungalow. It may also be stated that in rains, the rainy water of the road in front of the bungalow, from its South-West, being on a high level and the bungalow on low level on that side, flows into the South-West gate and causes flood in the front lawn and driveway. As this problem/hazard constantly occurred and was adversely felt by the parties hereto, they, with a view to remove/eradicate/mitigate the same, mutually agreed in the months of May-June, 1991 to have an embankment, loosely called a wall of small width and a very small height in order to regulate the flow of water and prevent the silting and erosion of earth/soil be made in the lawns only. Accordingly, an embankment loosely called a wall of a small width and raise was made in the front lawn and rear lawn only which thereafter channelized/regulated the flow of water and has checked the consequent silting and damage to the lawns and open areas of the suit property.



This was done also to minimize the seepage of water into the foundations of the suit building property towards the North-East side.”

190. The Gupta family contends that the purdah wall was built as the level of the suit property was uneven, the slope of the plot South-West side is on a higher level/plane than the North-East side due to which whenever there is rain, the lawns and other open spaces gets filled with the rain water causing siltage and erosion of earth/soil which also which also leads to flooding. In this regard, the cross examination of the PW1 is extracted below:-

“Q. I put it to you that there is no siltage or erosion of earth/ soil in the suit property as stated by you in your affidavit?

A. It is incorrect, in fact we had even raised an embankment to check the siltage or erosion of earth/soil in the year 1991.

Q. I put it to you that there have been no problems of siltage etc. in the suit property since its initial lease of the property which was granted in the year 1951 and your averments in para 9 are false?

A. it is incorrect.

.....

Q. I put it to you that the south-west gate, adjoining 6 Cavalary Lines, Delhi in the suit property belongs exclusively to the plaintiff and the north-east gate adjoining 2 Cavalary Lines, Delhi belong exclusively to the defendant since 1983?



A. It Is Incorrect. Both the gates of the suit property have always been used by both the parties.

.....

Q. When was the embankment/wall of small width had been raised in the front lawn and the rear lawn as stated by you in para 9 of your affidavit Ex. PW1/A?

A. I do not know. Again said the embankments had been raised in the year 1991.

Q. I put it to you that that the said embankments had been raised by Mr. Ashok jain?

A. It is incorrect.

Q. Can you give the dimensions of the aforementioned embankments?

A. The same had been constructed by the contractors and as such I do not have any idea about the dimensions of the embankment.

Q. I put it to you that the embankments/wall referred above extends to 3 ft below the ground level and is about 3 ft wide at its base?

A. I do not know.

Q. I put it to you that aforementioned embankments across the entire front and rear portions of the open land/lawn in the suit property and the same had been built for physically separating the portion of the plaintiffs and defendants?

A. It is incorrect.

Q. When did the defendants engrave the spaces and filled



with the black paint in the suit property as stated by you in para vii of Para 2 of the preliminary objections in your amended replication dated 20.05.2005

A. I do not know the exact date but it was done when the disputes had started in the year 1991

.....

Q. I put it to you that the black engraved lines in the suit property is in continuation of the embankment/walls and the same was meant for physical separation of the respective portions?

A. It is absolutely incorrect. The black engraved lines had been made in my absence and exist even in front of my bedroom.

Q. I put it to you that the black engraved lines as well as the embankments had been raised with the consent of the plaintiffs?

A. It is incorrect. Volunteered the parties were already having fights and the black engraved lines have been made by the defendants subsequently and as such there is no such question of the plaintiffs consent.

Q. I put it to you that in September, 1991 the plaintiffs have completed the construction of new outhouses in their portion and thereafter raised the dispute and did not allow the defendants to complete the walls for physically separation of the respective portions?

A. It is absolutely incorrect. The whole of the suit property



remains undivided and joined.”

191. From the above evidence, except for the fact that the purdah wall was for dividing the suit property as per the site plan, there is no other logical explanation as to why a wall would be erected in the front lawn and the rear lawn. Gupta family has not led any evidence to substantiate that the purdah wall was made for the purpose to prevent the siltage and erosion of soil. Except for a mere averment, there is no evidence (scientific or otherwise) as to how the purdah wall would prevent the siltage and erosion of soil, the only logical conclusion that can be drawn is that the purdah wall was for the division of the suit property. I could have very well understood the explanation of the Gupta family that purdah wall was erected for the purpose of preventing the siltage and erosion of soil, had the same been made by the Gupta family. What is important to note is that this purdah wall was not constructed by the Gupta family but by the Jain family.

192. The affidavit of evidence of DW-1 has detailed the above said facts as to why purdah wall was constructed. The relevant portion reads as under:-

“22. That in exercise of our rights and furthermore in order to protect the defendants’ privacy and for peaceful use, occupation and enjoyment of our portion of the suit property, the defendants started constructing, in June, 1991, a purdah/boundary wall on the South-Western outer limit of their portion, starting from its South-Eastern end point i.e starting from the boundary wall along the Nalah, and terminating at its North-Western end point i.e. terminating



at the boundary wall along the road. By mid July 1991 the defendants had constructed a 'L' shaped masonry purdah/boundary wall. The straight vertical face of the 'L' of the 'L' shaped wall was on the South Western outer limit of the defendants' portion. The said wall was about three feet deep, about three feet wide at the base and tapered to a width of about nine inches at ground level, and about four to eight inches in height above the ground level, on the 'kuchha' areas of the front side as well as the rear side of the 'pucca' area of the defendants' portion of the suit property, and a demarcation line was also engraved and filled with black paint on the floors of the 'pucca' front verandah and the adjoining 'pucca' open space/area thereto, as well as on the floors of the 'pucca' rear verandah and the adjoining 'pucca' open space/area thereto. This construction work of the purdah/boundary wall, including the demarcation line, was carried out by the defendants in their own portion of the suit property and at their own expense. Thereafter, the further construction/raising of the purdah/boundary wall had to be suspended due to the deteriorating health of my father. I say that the area from the South Western outer limit of the aforesaid Purdah/boundary wall and the demarcation line upto the South West boundary of the suit property adjoining 6, Cavalry Lines, including the built up area in possession and occupation of the plaintiffs i.e. the area of the South



Western half portion of the suit property shown uncoloured in the site plan Exh. DW1/1 is 1752.285 sq. mtrs. Similarly the area from the South Western outer limit of the aforesaid Purdah/boundary wall and the demarcation line upto the North East boundary of the suit property adjoining 2, Cavalry Lines, including the built up area in possession and occupation of the defendants i.e. the area of the North Eastern half portion of the suit property shown in red colour in the site plan Exh. DW1/1 is also 1752.285 sq mtrs.

23..... The photograph DW1/16 shows the aforesaid purdah/boundary wall constructed in the front lawn of the suit property. The photograph DW1/17 shows the demarcation line which was engraved and filled with black paint on the floor of tile 'pucca' front verandah and the adjoining 'pucca' open space/area thereto, and the same can be seen to be in alignment and in continuation of the South West outer limit of the aforesaid purdah/boundary wall constructed in the front lawn of the suit property which can be seen to extend upto the front boundary wall of the suit property along the road.”

- 193.** There is no cross examination regarding the same except mere suggestion to the contrary.
- 194.** The aforesaid facts lead to an inexplicable explanation that the purdah wall was erected as the partition wall pursuant to the execution of the ATS along with the site plan of the Jain family (Ex. DW-1/3). Further, there is also a black line running through the verandahs, again



showing that the suit property was divided as per the ATS and the site plan.

195. In addition, it is also inexplicable that if the black line was constructed without the consent of the Gupta family then why no complaint was made by them to any authority.

196. As already captured above, both the families were complaining to the authorities at every instance. There is no documentary evidence which shows that the Gupta family had made any specific complaint with regard to the construction of black line. On the other hand, Jain family *vide* letter dated 16.09.1991 to SHO, Maurice Nagar (Ex DW-1/29) complained about the incident that Gupta family is obstructing in resuming the suspended construction work.

197. The evidence of PW-1 in this regard reads as under:-

“Q. Did you make any police complaints in this regard?

A. Many complaints had been filed by both the sides and even proceedings under Section 107/151 Cr.PC were initiated against the parties by the police authorities. I do not remember if any specific complaint regarding the aforementioned incident had been made by me or not.

Q. I put it to you that no specific complaint had been filed by you regarding the aforementioned incident and your plea in this regard is false?

A. I have already answered in the foregoing question that I do not remember the exact details.”

198. The said facts lead me to conclude that the open areas were partitioned by the purdah wall and the constructed area was partitioned by the



black line.

- 199.** Furthermore, as already noted above by the letter dated 04.12.1991 (Part of DW-6/1 (Colly) that the suit property had already been demarcated on the ground upto plinth level and by letter dated 07.04.1992, the Jain family were permitted to construct a wall. Hence, the argument that the purdah wall was built to prevent siltage and erosion of earth/soil is meritless.
- 200.** In the year of 1999 when the Act of 1976 was repealed, four Sale Deeds dated 25.01.2000, 12.01.2000, 08.03.2000 and 18.02.2000 which are Ex DW-1/25 to Ex DW-1/28 were executed in favour of the Jain family and Sale Deeds dated 15.11.2000 (Ex PW-1/D1 and Ex PW-1/D2) were executed in the favour of Gupta family.
- 201.** It is will be relevant to mention here that the Sale Deeds executed in favour of the Jain family were executed by the erstwhile owners and the Sale Deeds executed in favour of plaintiff No. 2 and plaintiff No. 3 have been executed pursuant to the GPA executed in favour of plaintiff No. 1.
- 202.** It is not the case of either of the families that the Sale Deeds are unregistered document. The Gupta family urge that the Sale Deeds (Ex DW-1/25 to Ex DW-1/28) are not proved in accordance with law and also cannot be looked into as the same are barred by “*Post Litem Motam*”, reliance is placed on ***Radha Krishna Singh (supra)***.
- 203.** Clause 1 of the Sale Deeds executed in favour of the Jain family (Ex DW1/25 to Ex DW1/28) are identical. For the sake of perusal, Clause 1 is extracted below:-

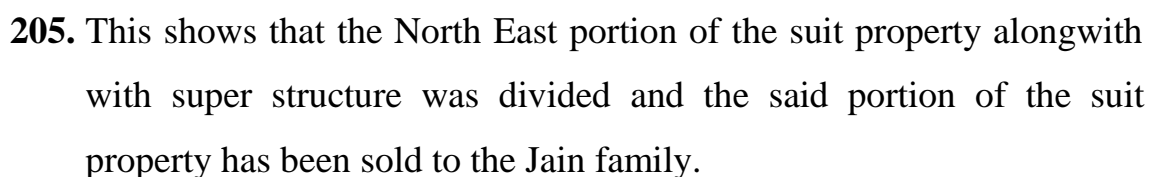
“1) In pursuance of the aforesaid Agreement for Sale dated



16.9.1983 and in consideration of the payment of VENDOR'S full sale consideration of Rs.1,50,000.00 (Rupees One Lac Fifty thousand only) by the VENDEES to the VENDOR, the details whereof have already been given hereinabove, and the receipt whereof is hereby acknowledged by the VENDOR, the VENDOR does hereby assign, convey and transfer unto the VENDEES, all her rights, title and interest (one-fourth share) in the aforesaid North- Eastern, half portion of 4, Cavalry Lines, Mall Road, Delhi, comprising 1752.285 sq.mt. of perpetual lease hold land, being the North-Eastern half of old Plot No.8 (part) in Kingsway outside the Cantonment of Delhi, now known as Bungalow No.4, Cavalry Lines, Mall Road, Delhi, together with the structures/buildings constructed on the said 1752.285 sq.mt. of land, alongwith all rights, easements, and appurtenances whatsoever belonging or in anywise appertaining thereto, more fully described in the SCHEDULE hereto, and shown in red colour in the plan (Annexure-I) annexed hereto."

204. A perusal of the said clause clearly shows that the suit property was divided and by executing the Sale Deeds, the erstwhile owners have reconfirmed the ATS. Further, the vendors have agreed to sell to transfer, convey all their rights in North East half portion of the suit property which is fully described in red colour in the Schedule attached with the Sale Deeds. The Schedule attached to the Sale Deed is extracted below:-

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206. Further, to prove the Sale Deeds executed in favour of the Jain family, Hemant Bhatia, Record Incharge, Office of Sub-Registrar-I, Kashmere Gate, Delhi appeared as DW3 and stated that “*Ex DW-1/25, DW-1/26, DW-1/27 and DW-1/28 which are the certified copies have been issued from our office.*”
207. *Per Contra*, on perusing, the sale deeds of the Gupta family have been executed by the plaintiff No. 1 in favour of plaintiff No. 2 and plaintiff No. 3. The plaintiff No. 1 has signed as the vendor based upon the GPA issued by the legal heirs of Mr. Kalia in his favour. Hence, it can be said that the sale deeds executed in favour of the Gupta family can be considered as a self-serving document.
208. The Hon’ble Supreme Court in ***Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 256*** has observed that during the *lis*, if there is any subsequent event/development then the Court can look into it for doing complete justice for the parties. The relevant para is extracted below:-

“11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances



would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu v. Motor & General Traders* [(1975) 1 SCC 770 : AIR 1975 SC 1409] this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.”

209. On perusal, during the lis, subsequent events being Sale Deeds have



been executed in favour of both the families. The Jain family has brought these subsequent events by way of an amendment in the plaint. The said amended plaint was duly responded by the Gupta family in their amended written statement.

- 210.** In the present case, the issue in *lis* is whether the suit property stood partitioned or was joint. The sale deeds in favour of the Jain family executed by the erstwhile owners reconfirm the position enunciated in the ATS. The Sale Deeds, only reaffirms the stand of the Jain family that the suit property stood partitioned and (relying upon the Sale Deeds) even though a subsequent event, only enables this Court to do complete justice. The Sale Deeds only confirms the site plan annexed with the ATS of the Jain family.
- 211.** The argument of Gupta family regarding the Sale Deeds are hit by the doctrine of “*Post litem motam*” is misconceived. Reliance was placed on ***Radha Krishna Singh (supra)***.
- 212.** The said judgment is to be read in context of the facts of that case, the Hon’ble Supreme Court was dealing with case as to how the genealogy is to be proved. In this context, the doctrine of “*post litem motam*” was referred. The said doctrine was explained by the Hon’ble Supreme Court as under:-

“137. The admissibility of such declaration is however considerably weakened if it pertains not to public rights but to purely private rights. It is equally well settled that declarations or statements made post litem motam would not be admissible because in cases or proceedings taken or declarations made ante litem motam, the element of bias



and concoction is eliminated. Before, however, the statements of the nature mentioned above can be admissible as being ante litem motam they must be not only before the actual existence of any controversy but they should be made even before the commencement of legal proceedings. In this connection, in para 562 at p. 308 of Halsbury's Laws of England the following statement is made:

“To obviate bias, the declarations must have been made ante litem motam, which means not merely before the commencement of legal proceedings, but before even the existence of any actual controversy, concerning the subject-matter of the declarations. So strictly has this requirement been enforced that the fact that such a dispute was unknown to the declarant, or was fraudulently begun with a view to shutting out his declarations, has been held immaterial.”

138. This position however cannot hold good of statements made post litem motam which would be clearly inadmissible in evidence. The reason for this rule seems to be that after a dispute has begun or a legal proceeding is about to commence, the possibility of bias, concoction or putting up false pleas cannot be ruled out. This rule of English law has now been crystallised as one of the essential principles of the Evidence Act on the question of admissibility of judgments or documents. M.M. Prasad, J., has dealt with this aspect of the matter fully and we entirely agree with the



opinion expressed by him on this point. In fact, Section 32(5) of the Evidence Act itself fully incorporates the doctrine of post litem motam, the relevant portion of which may be extracted thus:

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.—

** * **

(5) ... the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.”

213. After discussing various other authorities, the Hon’ble Supreme Court summarised as under:-

145. Thus, summarising the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows:

(1) A judgment in rem e.g. judgments or orders passed in admiralty, probate proceedings, etc., would always be admissible irrespective of whether they are inter partes or not.

(2) Judgments in personam not inter partes are not at all admissible in evidence except for the three purposes mentioned above.

(3) On a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of



evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.

(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.

(5) Statements, declarations or depositions, etc., would not be admissible if they are post litem motam.”

214. The combined reading of the aforementioned paras clearly shows that the doctrine “*post litem motam*” is to be read in context of the statements, declaration, or depositions and more particularly with respect to Section 32 of Act of 1872. The present case is not the same as in the present case, it is the registered Sale Deeds which are alleged to be hit by the doctrine of “*post litem motam*” and not any statement, declaration or deposition. In the present case, the judgment of ***Om Prakash Gupta (supra)*** will be applicable where the Court can look at subsequent events for doing complete justice. Hence the said judgment i.e. ***Radha Krishna Singh (supra)*** read as a whole will not be applicable to the facts of the present case.

Argument on Issue No. 3 framed in CS (OS) No. 2069 of 1998:
Whether the plaintiff has concealed the material facts as alleged by the defendants. If so to what effect? OPD

215. Gupta family has argued that the suit filed by the Jain family cannot be entertained as they have concealed the material facts like Perpetual



Lease deed dated 15.02.1951, Sale Deed dated 29.11.1960, GPA dated 16.09.1983 and Supplementary Agreement 04.03.1989.

- 216.** It was further argued that the suit filed by the Jain family was not a simplicitor suit for injunction but a decree of declaration is also sought. Hence the Jain family has played fraud with the Court.
- 217.** The ATS dated 16.09.1983 categorically mentions about the execution of the Perpetual Lease deed dated 15.02.1951 and Sale Deed dated 29.11.1960. The relevant portion is extracted below:-

“AA. WHEREAS by a lease deed in perpetuity dated 15th February, 1951 registered at the Office of the Sub-Registrar, Delhi as document No. 1737 in Additional Book No. 1 Vol.No: 186 on pages 161 to 163 on the 2nd day of May 1951 in favour of one Mr. John Cecil Roberts of Cavalary Lines, Delhi, all that piece and parcel of land containing by admeasurement 1.04 acres situated at plot No.8 (part) in Kingsway outside the Cantonment: of Delhi alongwith the buildings and other structures, outhouses, constructed the eon, presently known as Bungalow No.4, Cavalary. Lines, Delhi was demised by the President of India, through Sh. Ram Sarup, Military Estate Officer, Delhi Circle, Delhi Cantonment vide Ministry Of Defence letter No-30/3/1/D-8/47/3858-1/49 dated 3rd May 1949 by way of building lease in perpetuity at the annual rent of Rs.6.25 clear of all deductions by yearly payment on the 1st day of July. The said lease was to commence from the 1st day of July 1950. The terms and conditions of the said lease



are specified in the said lease appearing as Annexure 'A'.

.....

CC. AND WHEREAS vide a sale deed dated 29th November, 1960 the said Mrs.Onila Chatterjee transferred land admeasuring app.0.866 acres (App. 3504.57 sq.mt) out of a total land of 1.04 acres alongwith the superstructures, buildings, outhouses, and garrages thereon, in favour of Rai Sahib Pandit Daulat Ram Kalia s/o late Pandit Balmukand Kalia and Mrs. Vidya Rant Kalia w/o Rai Sahib Pandit Daulat Ram Kalia which was duly registered with the Sub-Registrar Delhi vide Document No.5113 Add. Book No.1 Vol.563 pages 197 to 208 dated 12.12.1960."

218. Hence there is no concealment by the Jain family when the plaint was originally filed.

219. On perusing the plaint of Jain family filed in CS (OS) No. 2069, the prayer clause shows that a decree of perpetual injunction was only prayed and not a decree of declaration. In order to grant a decree of injunction, the Jain family relied upon the ATS only. After the execution of the Sale Deeds in favour of the Jain family, the said facts were brought by way of an amendment in the plaint. Hence, to my mind, there is no concealment by the Jain family when the plaint was originally filed seeking a decree of injunction.

220. I shall now decide the issues framed *vide* Order dated 04.04.2006.

Issues framed in CS (OS) 1300/1992

1)Whether the property bearing No.4, Cavalry Lines comprises land admeasuring 3504.57 sq. metres is incapable of being physically



partitioned? OPP

221. I have already held that the suit property is capable of being partitioned as there is no restriction in the Perpetual Lease Deed dated 15.02.1951 (Ex DW-5/2) and the suit property stood partitioned at the time when both the ATS were executed. Further, both the families were put in possession in their respective areas as per the site plan annexed with the ATS of the Jain family. In this view, the said issue is decided against the Gupta Family.

2) Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP

222. In view of my finding hereinabove and in view of my findings that the suit property is being capable of partition and has been partitioned at the time of execution of ATS and the same has been confirmed by the subsequent Sale Deeds executed in favour of Jain family, I am of the view that the Gupta family is not entitled to the declaration that the suit property is incapable of partition.

3) Whether the plaintiff is entitled for a decree of perpetual injunction as prayed for? OPP

223. I have already held that there was a purdah wall going through the front lawn and the rear lawn which was the partition wall between the Gupta and Jain family. Since the parties have already divided their areas and have been in continuous use and occupation of the structure, the injunction restraining the Jain family from raising any partition wall, cannot be granted. Hence the said issue is decided against the Gupta family.

4) Whether any partition wall was constructed for partitioning the



property by metes and bounds, if so, to what extent and to what effect?

OPD

224. I have already held that the purdah wall was specifically built for the partitioning of the suit property and not to prevent the siltage and erosion of soil. The said issue is decided against the Gupta family.

5)Whether the plaintiffs are estopped from claiming any relief as alleged in the written statement? OPD

225. In view of my findings noted above, there is no estoppel against the Gupta family from claiming any relief as both the suits have been consolidated and are to be tried together.

6)Whether any specific, defined, distinct and independent portion was not agreed to be sold by the owners to the defendants, if so to what effect? OPP

226. I have held that as per the ATS dated 16.09.1983, the specific and distinct portion was agreed to be sold to both the families as per the site plan of the Jain family. Hence the suit property was divided at the time when the ATS dated 16.09.1983 was executed in favour of the Jain family. In this view, the said issue is decided against the Gupta family.

7)Relief

227. In view of the reasons recorded above, no relief can be granted as prayed for. Hence, the Suit i.e. CS(OS) 1300/1992 filed by the Gupta family is dismissed.

228. No orders as to costs.

Issues framed in CS (OS) 2069/1998

1.Whether the plaintiff is entitled for a declaration that he is the



lawful owner and in possession of North East half portion as shown in red color in plan annexed with the amended plaint? OPP

229. For the reasons noted above, the Jain family is entitled to a decree of declaration that the North East portion of 4, Cavalry lines, Mall Road, Civil Lines, Delhi as shown in the site plan annexed with the Sale Deeds (Ex DW-1/25, Ex DW-1/26, Ex DW-1/27 and Ex DW-1/28) is in possession of the Jain family and they are the lawful owners of the same.

2. Whether the plaintiff is entitled for a decree of perpetual injunction as prayed for? OPP

230. In view of my findings noted above, the Gupta family is restrained by a decree of perpetual injunction from creating obstacles and interference in the remaining erection, raising and completion of the boundary/purdah wall above the already built up wall existing in the premises of the Jain family as shown in the site plan.

231. Further, the Gupta family, their agents and employees are also restrained by a decree of perpetual injunction from entering into, interfering in the possession of the Jain family in the North East portion of 4, Cavalry lines, Mall Road, Civil Lines, Delhi as shown in the site plan annexed with the Sale Deeds (Ex DW-1/25, Ex DW-1/26, Ex DW-1/27 and Ex DW-1/28).

3. Whether the plaintiff has concealed the material facts as alleged by the defendants, if so, to what effect? OPD

232. In view of the reasons noted above in paras 206 to 208, there is no concealment of facts by the Jain family. Hence the said issue is decided against the Gupta family.



4. Whether the suit is bad for mis-joinder of parties? OPD

233. The said issue has not been addressed and need not be answered.

5. Relief

234. In view of the reasons noted above, Suit i.e. CS(OS) 2069/1998 filed by the Jain family is decreed accordingly.

235. No orders as to costs.

236. Decree Sheet be prepared.

237. Both the suits are disposed of in the above terms.

238. Pending application(s), if any, shall stand disposed of.

239. Before parting with the judgment, I would like to appreciate the valuable assistance rendered by Mr Sindhwani, learned senior counsel and his team and Mr Vashishth, learned counsel and his team in disposing of a 30 year old suit.

JASMEET SINGH, J

SEPTEMBER 17th, 2024/(MSQ)