



2024:DHC:7537



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

***Reserved on: 22.08.2024***  
***Pronounced on: 01.10.2024***

+ **CS(OS) 174/2018 & CC 26/2018**

MRS. KUSUM TANEJA .....Plaintiff  
Through: Mr.Mahesh K. Chaudhary and  
Ms.Sushmita Chaudhary, Advs.

versus

SHRI MANIK TANEJA AND OTHERS .....Defendants  
Through: Mr.Ashok Mahajan, Adv. for  
D-1.  
Mr.Dhruv Mohan, Mr.Ishaan  
Aggarwal and Ms.Tarana Khan,  
Advs. for D-3 and 4.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

### **J U D G M E N T**

1. This suit has been filed by the plaintiff praying for a decree of partition of the suit property, that is, Plot No. FA-53 (Old) (New No. F-305), admeasuring 148.5 Sq. Yds., situated at Mansarovar Garden, New Delhi (hereinafter referred to as the 'suit property'). The plaintiff also prays for a decree of rendition of accounts against the defendant no.1 for the benefits enjoyed/rent received by the defendant no.1, and a decree of recovery of the amount.

#### **Case of the Plaintiff**

2. The plaintiff is the widow of late Shri Avinash Kumar Taneja, who unfortunately passed away on 23.07.2006. The defendant no.1



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and the defendant no.2 are the sons of late Sh.Avinash Kumar Taneja and the plaintiff herein. The defendant nos.3 and 4 are the children of late Smt. Parbati, who the plaintiff claims had a half share in the suit property.

3. It is the case of the plaintiff that late Sh.Lakhmi Chand Taneja, the grandfather of late Sh. Avinash Kumar Taneja, was the absolute and exclusive owner of the suit property. The suit property was purchased by late Sh. Lakhmi Chand Taneja in the year 1960 from M/s Bharat Builders & Colonizers, *vide* an Agreement to Sell. Later, a Sale Deed dated 17.04.1972 was executed by M/s Bharat Builders & Colonizers in favour of late Sh. Lakhmi Chand Taneja, which was duly registered in the office of Sub-Registrar of Documents, Delhi.

4. The plaintiff further claims that during his lifetime, late Sh.Lakhmi Chand Taneja had executed a Will dated 04.02.1970, bequeathing the suit property to his daughter- Smt. Parbati and the husband of the plaintiff-late Sh.Avinash Kumar Taneja, in equal shares.

5. Sh. Lakhmi Chand Taneja unfortunately passed away in the year 1979.

6. Unfortunately, Sh. Avinash Kumar Taneja also passed away on 23.07.2006, leaving behind three Legal Heirs, that is, his widow, who is the plaintiff in the present suit, and his two sons, the defendant nos. 1 and 2 herein.

7. The plaintiff further claims that late Sh.Avinash Kumar Taneja and Smt.Parbati had entered into an oral partition of the suit property, dividing the property into two halves.



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8. The plaintiff claims that Smt.Parbati constructed a house in her portion/share of the suit property. The remaining portion of the plot, admeasuring 148.5 Sq. Yds., came to the share of late Sh.Avinash Kumar Taneja. He constructed a small room in his portion of the said plot, and in the remaining portion, there are temporary sheds and there is no ‘*pucca construction*’ in his portion of the said property.

9. The plaintiff further claims that Smt. Parbati also unfortunately passed away on 01.12.2005, leaving behind her three children as her Legal Heirs, that is, the defendant no.3, the defendant no.4, and late Sh. Madan Kumar @ Madan Lal Narula, who was unmarried and unfortunately passed away on 31.12.2016.

10. The plaintiff claims that late Sh. Madan Kumar @ Madan Lal Narula was unmarried, the defendant nos.3 and 4 were his only Legal Heirs and, therefore, the half portion of the entire plot of land fell to the share of the defendant nos.3 and 4.

11. The plaintiff asserts that the defendant no.1, being the elder son of the plaintiff, has been managing the suit property after the death of late Sh. Avinash Kumar Taneja, and had let out a portion of the same to a marble merchant at a monthly rent of Rs.65,000/-. It is further asserted that the defendant no.1 has also been carrying out his own business of property dealing from the room constructed by late Sh. Avinash Kumar Taneja.

12. The plaintiff asserts that in the month of December, 2017, upon visiting the suit property, it came to the knowledge of the plaintiff that the defendant no.1 has recently let out the room constructed by late



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Sh. Avinash Kumar Taneja to someone for running a men's saloon at a monthly rent of Rs.25,000/-.

13. The plaintiff claims that, thereafter, the plaintiff sent a Legal Notice dated 23.01.2018, calling upon the defendant no.1 to partition the suit property, that is, the half portion of the entire plot of land of F-305, Mansarovar Garden, New Delhi, and hand over 1/3<sup>rd</sup> share thereof to the plaintiff. The defendant no.1, however, *vide* reply dated 06.02.2018, denied the claim of partition, though admitting that he had let out the suit property. The plaintiff sent a rejoinder notice dated 17.02.2018.

14. The plaintiff, thereafter, filed the present suit claiming a decree of partition as also for rendition of accounts.

**Proceedings in the Suit in relation to the Defendant Nos. 1 & 2**

15. The right of the defendant no.2 to file the written statement was closed by an Order dated 31.01.2019, passed by the learned Joint Registrar (Judicial).

16. The right of the defendant no.1 to file the written statement was also closed by an Order dated 08.05.2019, passed by the learned Joint Registrar (Judicial).

17. By an Order dated 30.07.2019, this Court, while denying further opportunity to the defendant no.1 to file his written statement, observed as under:

*“The Court has also noticed that the present suit being a suit of partition of property bearing Plot No. FA-53 (Old) (New No. F-305), built over land admeasuring 297 sq. yds., Mansarovar Garden, New Delhi, the*



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*Court is to determine the share of each of the parties in the present suit. At the time of determination of the shares of the parties. Defendant No.1's share would automatically get determined. Thus, no prejudice would be caused to the said Defendant. Further, the stand of the Defendant No.1, orally, is that there were various other properties which the Plaintiff and the other children have already disposed of and that they are not accounting for the same. If that is the position. Defendant No.1 is free to file his own suit for partition in respect of the said moveable/immoveable assets in accordance with law. The Defendant No.1 is, however, permitted to participate in the present suit proceedings from this stage onwards."*

18. The defendant no.1, thereafter, filed an application, being I.A. No.11560/2019, praying for modification of the Order dated 30.07.2019 by which the defendant no.1 was declined permission to file his written statement.

19. On 26.08.2019, the said application was dismissed as withdrawn, as the counsel for the defendant no.1 submitted that the defendant no.1 shall be filing an application seeking review of the Order dated 30.07.2019.

20. The defendant no.1 then filed a petition seeking review of the order dated 30.07.2019, being Review Petition No.362/2019. However, the same was dismissed *vide* Order dated 20.12.2019, observing that in view of the Delhi High Court (Original Side) Rules, 2018, the time for filing the written statement cannot be extended. However, it was reiterated that the defendant no.1 was permitted to participate in the proceedings.



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21. Pertinently, in I.A. No.11560/2019 and in Review Petition No.362/2019, the defendant no.1 had pleaded that late Sh. Lakhmi Chand Taneja passed away in 1979, leaving behind his son, Sh. Jog Dhian and daughter Ms. Parbati. He had claimed that the Will dated 04.02.1970 of late Sh. Lakhmi Chand Taneja is forged and fabricated. However, at this stage itself, it needs to be emphasised that *vide* Order dated 01.07.2019 passed by the learned Joint Registrar (Judicial), the Will dated 04.02.1970 had been deemed to have been admitted by the defendant no.1 and defendant no.2 in view of the Order XII Rule 2A of the CPC. The defendant no.1 never sought review of this Order nor challenged the same.

**Case of the Defendant Nos. 3 & 4**

22. As far as the defendant nos.3 and 4 are concerned, apart from filing a written statement to the present suit, they also filed a Counter Claim, being CC No.26/2018. They asserted that the suit property had not been partitioned between late Sh. Avinash Kumar Taneja and late Smt. Parbati, as claimed by the plaintiff. It was only because of the cordial relationship between the two of them, that Smt.Parbati constructed a house in the rear portion of the suit property, while late Sh.Avinash Kumar Taneja was allowed to use the front portion for his own commercial use. They assert that the same, however, did not amount to a partition of the suit property.

23. It was asserted that late Smt. Parbati had left behind three Legal Heirs, that is, the defendant no.3, the defendant no.4, and late Sh. Madan Kumar @ Madan Lal Narula, who unfortunately passed away



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on 31.12.2016, without being married. It was further asserted that Sh. Madan Kumar @ Madan Lal Narula and the defendant no.4 had relinquished their respective 1/6<sup>th</sup> share in the suit property in favour of the defendant no.3, *vide* registered Deed of Relinquishment dated 22.06.2012, making the defendant no.3 the owner of the half undivided portion of the suit property.

24. The defendant no.3, in the counter claim, therefore, prayed for a decree of partition of the whole of the suit property, claiming half share therein.

**Replication of the plaintiff to the written statement of the defendant nos.3 &4**

25. The plaintiff filed the replication to the written statement of the defendant no.3, as also the written statement to the counter claim filed by the defendant no.3, reiterating the contents of the plaint and the fact of the oral partition of the suit property between late Sh. Avinash Kumar Taneja and late Smt.Parbati

**Issues**

26. This Court by its Order dated 30.07.2019, framed the following issues:

- “i. Whether there was an oral partition between Late Sh. Avinash Kumar Taneja and Smt. Parbati in respect of the suit property as alleged in the plaint, if so what is its effect? OPP*
- ii. Whether Defendant No. 3 is the owner of 1/2 undivided share in the suit property admeasuring 297 sq. yards? OPD*



- iii. Whether the Plaintiff is the owner of 1/6<sup>th</sup> undivided share in the suit property or 1/3<sup>rd</sup> share in the portion admeasuring 148.5 sq yards as alleged in the plaint? OPP
- iv. Whether the suit property is liable to be partitioned and if so what would be the share of the various parties in the suit? OPP.
- v. Whether the Plaintiff is entitled to a decree of Rendition of accounts of profits against Defendant no.1, as prayed? OPP
- vi. Relief and costs”

27. Pertinently, there was no issue framed on the validity of the Will dated 04.02.1970 of late Sh. Lakhmi Chand Taneja, presumably, as it had been admitted by the defendant nos.3 and 4, and deemed to be admitted by the defendant nos.1 and 2, *vide* Order dated 01.04.2019 passed by the learned Joint Registrar (Judicial).

### **Oral Evidence**

28. The plaintiff examined herself as PW-1. In her evidence by way of affidavit (Ex.PW1/A), she reiterated the contents of her plaint.

29. In her cross-examination by the learned counsel for the defendant no.1, it was put to her that as the sale deed *qua* the suit property had been executed on 17.04.1972, what right did late Sh. Lakhmi Chand Taneja have to bequeath the suit property in the Will dated 04.02.1970. The plaintiff answered that as she had married late Sh. Avinash Kumar Taneja only in the year 1977, she was not aware of the situation prior to the year 1977. She admitted that late Sh. Lakhmi Chand Taneja had three children, that is, one son namely, Sh. Jog Dhian Taneja, and two daughters, namely, Smt.Parbati and Smt.Sheila. She further stated that she could not say why no share has





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been given to Sh. Jog Dhian Taneja or Smt. Sheila in the Will of Sh. Lakhmi Chand Taneja. She stated that she is not aware of the situation with respect to the second property mentioned in the Will, that is, property bearing no.D-5/14, Krishna Nagar, Delhi. She denied the suggestion that her husband, late Sh.Avinash Kumar Taneja, had sold it for his own benefit. She further denied the suggestion that the Will has been forged and fabricated after the death of Sh. Lakhmi Chand Taneja and that is the reason why the present case has been filed thirty eight years after his death. She admitted that she had not filed any rent agreement/receipt on record in respect of the monthly rent of Rs.65,000/- alleged to have been received by the defendant no.1 from letting out a portion of the suit property to a marble merchant, and/or in respect of monthly rent of Rs.25,000/- alleged to have been received by defendant no.1 by letting out a room to someone for running a men's saloon.

30. The plaintiff was also cross-examined by the learned counsel for the defendant nos.3 and 4. In her cross-examination, she admitted that the suit property lies undivided till date and that the legal heirs of late Smt. Parbati and late Sh. Avinash Kumar Taneja have equal undivided share in the suit property as per the Will and it remained so till date. She also admitted that the suit property has not been partitioned till date.

31. No other witness was examined by the plaintiff.

32. The defendant no.3 also examined himself as D3W-1.



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33. The defendant no.3 tendered his evidence by way of affidavit dated 09.08.2023 (Ex.D3W1/A) and also exhibited a copy of the Relinquishment Deed dated 22.06.2012 (Ex.D3W1/1).

34. In his cross-examination by the learned counsel for the plaintiff, he denied the suggestion that the suit property had been partitioned between the parties. Pertinently, he was not cross-examined by the learned counsel for the defendant no.1.

35. The defendant nos.3 and 4 did not lead any further oral evidence.

**Submissions of the Learned Counsel for the Plaintiff**

36. The learned counsel for the plaintiff submits that though the plaintiff was claiming that an oral partition had taken place between late Sh. Avinash Kumar Taneja and late Smt. Parbati, he concedes to the counter claim and to the assertion of the defendant nos.3 and 4 that no such oral partition took place. Therefore, in terms of the prayer made in the counter claim, the entire land needs to be now divided.

37. He further submits that in view of the Will of late Sh. Lakhmi Chand Taneja and the unfortunate demise of late Sh. Avinash Kumar Taneja and late Smt. Parbati, the plaintiff, the defendant no.1, and the defendant no.2, are all entitled to 1/6<sup>th</sup> share each in the entire suit property, whereas the defendant no.3, in view of the unfortunate demise of late Sh. Madan Kumar @ Madan Lal Narula and the Relinquishment Deed dated 22.06.2012, is entitled to 1/2 share (one half) of the entire suit property.



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38. He submits that in terms of Order XII Rule 2A of the CPC, the plaint as well as the documents filed by the plaintiff are deemed to be admitted by the defendant nos.1 and 2.

39. He submits that the defendant no.1, in his reply dated 06.02.2018 (Ex.P-5) to the Legal Notice dated 23.01.2018 (Ex.P-3) sent by the plaintiff, admitted to be receiving rent for the suit property from the marble merchant and men's saloon. Therefore, he is also liable to render accounts for the rent received by him to the plaintiff.

**Submissions of the Learned Counsel for the Defendant Nos. 3 & 4**

40. The learned counsel for the defendant nos.3 and 4 does not oppose the submissions made by the learned counsel for the plaintiff and, in fact, prays that the suit and the counter claim be decreed in terms of the prayer made in the counter claim.

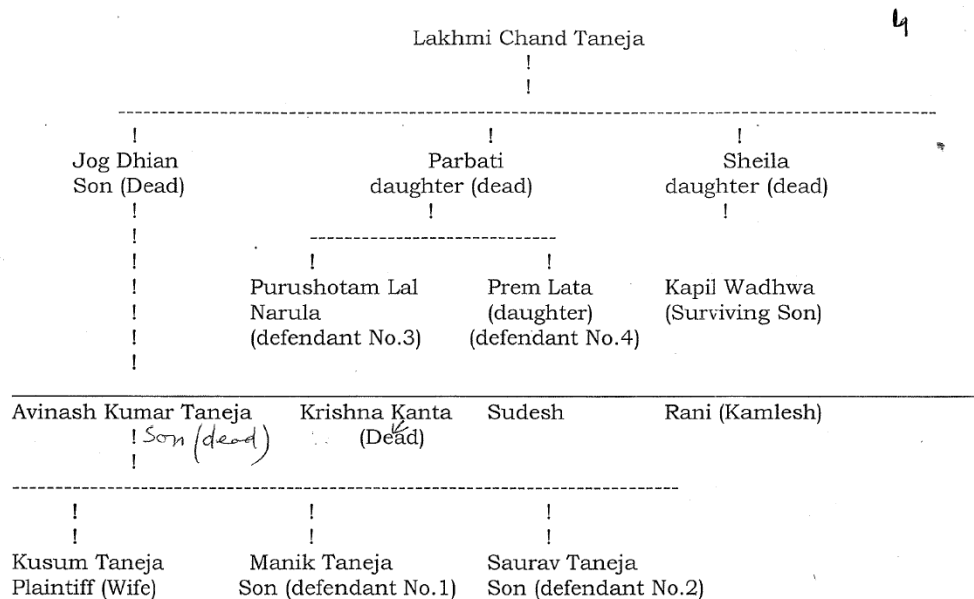
**Submissions of the Learned Counsel for the Defendant No. 1**

41. The suit and the counter claim are, however, opposed by the learned counsel for the defendant no.1, who submits that in the present case, the plaintiff and the defendant nos.3 and 4 claim their title on the basis of a purported Will dated 04.02.1970 alleged to have been executed by late Sh. Lakhmi Chand Taneja. The said Will, however, has not been proved in accordance with law. He submits that on the date of the execution of the alleged Will, late Sh. Lakhmi Chand Taneja was not even the owner of the suit property and the suit property was transferred in his favour only by a Sale Deed dated



17.04.1972, that is, post the execution of the alleged Will. He submits that the said Will is an unregistered document, written on a piece of paper in a very unusual and unnatural manner, and on the face of it, looks to be forged and fabricated.

42. He submits that there were other Legal Heirs of late Sh. Lakhmi Chand Taneja, details whereof have been given in a pedigree table annexed with his written submissions, which is reproduced hereinunder:



43. He submits that the plaintiff has failed to lead any cogent evidence on her claim for rendition of accounts. There is no proof of any rent being received by the defendant no.1, much less the one claimed by the plaintiff.



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44. He submits that the counter claim and the suit, therefore, deserve to be dismissed.

### **Analysis & Findings**

45. I have considered the submissions made by the learned counsels for the parties.

46. It is not disputed by any of the parties to the suit that the suit property was owned by late Sh. Lakhmi Chand Taneja, who unfortunately passed away in the year 1979. The plaintiff and the defendant nos.3 and 4 have claimed that he had left behind a Will dated 04.02.1970 (Ex.P-2), bequeathing the said property in favour of late Sh. Avinash Kumar Taneja and late Smt. Parbati.

47. Though the learned counsel for the defendant no.1 has stated that the said Will is forged and fabricated and has not been proved by the plaintiff as per law, the said submission is liable to be rejected for the reason that the said Will was deemed to have been admitted by the defendant no.1, as recorded in the Order dated 01.07.2019 passed by the learned Joint Registrar (Judicial). As noted hereinabove, the said order remained unchallenged by the defendant no.1.

48. Herein, it is important to note that in Delhi, it is not necessary to obtain Probate or Letter of Administration of a Will. Reference in this regard may be made to the judgment of the Supreme Court in ***Kanta Yadav v. Om Prakash Yadav & Ors.***, (2020) 14 SCC 102.

49. It is also important herein to reiterate that the defendant no.1 was not allowed to file a written statement in the present suit and therefore, in any case, the above defence of the defendant no.1,



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challenging the Will dated 04.02.1970 of late Sh. Lakhmi Chand Taneja, cannot be accepted by this Court. In absence of any challenge to the Will, it was not necessary for the plaintiff to lead evidence to prove the same.

50. As far as the submission made by the learned counsel for the defendant no.1, that since the suit property had been acquired by late Sh. Lakhmi Chand Taneja *vide* a sale deed dated 17.04.1972, therefore, it could not have been bequeathed by way of a Will executed on 04.02.1970, is concerned, it may be noticed that in the Sale Deed dated 17.04.1972 executed by M/s Bharat Builders & Colonizers in favour of late Sh. Lakhmi Chand Taneja (Ex.P-1) itself, it has been mentioned that there was an Agreement to Sell of the year 1970 executed between the said two parties, whereby, M/s Bharat Builders & Colonizers had agreed to sell and late Sh. Lakhmi Chand Taneja had agreed to purchase the suit property for a total consideration of Rs.8761.50/-, which amount had already been received by the vendor from the vendee. Therefore, late Sh. Lakhmi Chand Taneja had a right in the suit property, even though not fully crystalized, which he bequeathed by way of the subject Will in favour of late Sh. Avinash Chand Taneja and late Smt. Parbati.

51. The submission of the learned counsel for the defendant no.1 that there were other legal heirs of late Sh. Lakhmi Chand Taneja, that is, his second daughter-late Smt.Sheila, and the father of late Sh. Avinash Kumar Taneja namely, Sh. Jog Dhian Taneja, who had not been bequeathed the suit property under the Will, thereby raising suspicion thereon, also cannot be accepted in view of the defendant



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no.1 not filing a written statement to the Suit and the Will having been deemed to be admitted by the defendant no.1 by the Order dated 01.07.2019, as has been noticed hereinabove.

52. With the above, it has been proved on record that the suit property was owned by late Sh. Lakhmi Chand Taneja, who had left behind his Will dated 04.02.1970, thereby bequeathing the suit property in favour of late Sh. Avinash Kumar Taneja and Late Smt. Parbati. There is no dispute that late Sh. Avinash Kumar Taneja unfortunately passed away on 23.07.2006, leaving behind the plaintiff (his widow) and the defendant nos.1 and 2 (his sons) as his Legal Heirs. It is also not disputed that late Smt. Parbati also unfortunately passed away on 01.12.2005, leaving behind three legal heirs, that is, the defendant no.3, defendant no.4, and another son, namely Mr. Madan Kumar @ Madan Lal Narula. It is not denied that Mr. Madan Kumar @ Madan Lal Narula unfortunately passed away on 31.12.2016, and that since he was unmarried, therefore, only the defendant nos.3 and 4 would be his Legal Heirs. In any case, the claim of the defendant no.3 is that the defendant no.4 and late Sh. Madan Kumar @ Madan Lal Narula had executed a Relinquishment Deed dated 22.06.2012 (Ex.D-3W1/1) in favour of the defendant no.3, which remains undisputed by the defendant no.4 or the other parties to the Suit.

53. It is, therefore, held that Sh. Avinash Kumar Taneja held half share in the suit property, which has devolved upon the plaintiff and the defendant nos.1 and 2 equally, with each holding 1/6<sup>th</sup> share each in the said property.



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54. The half share of the suit property held by Smt. Parbati, in view of the Relinquishment Deed dated 22.06.2012 executed by the defendant no.4 and late Sh. Madan Kumar @ Madan Lal Narula, has devolved in favour of the defendant no.3.

55. The plaintiff in the plaint had initially claimed that there was an oral partition of the suit property between late Sh. Avinash Kumar Taneja and late Smt. Parbati. In the course of evidence, however, she gave up the said plea and admitted that there was no partition of the property affected. Even during the course of submissions, the learned counsel for the plaintiff admitted that there was no partition of the suit property between late Sh. Avinash Kumar Taneja and late Smt. Parbati.

### **Findings on the Issues**

56. In view of the above, the issues, as framed on 30.07.2019 by this Court, are answered as under:

**Issue No. (i)** - *Whether there was an oral partition between Late Sh. Avinash Kumar Taneja and Smt. Parbati in respect of the suit property as alleged in the plaint, if so what is its effect?*

The issue no.(i) is decided against the plaintiff and in favour of the defendant no.3, holding that there was no oral partition of the suit property between late Sh. Avinash Kumar Taneja and late Smt. Parbati.

**Issue No. (ii)** - *Whether Defendant No. 3 is the owner of 1/2 undivided share in the suit property admeasuring 297 sq. yards?*





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The issue no.(ii) is decided in favour of the defendant no.3 and against the plaintiff, holding that the defendant no.3 is the owner of the one-half undivided share in the suit property.

**Issue No. (iii)** - *Whether the plaintiff is the owner of 1/6th undivided share in the suit property or 1/3rd share in the portion admeasuring 148.5 sq yards as alleged in the plaint?*

The issue no.(iii) is decided by holding that the plaintiff is the owner of the 1/6<sup>th</sup> undivided share in the suit property.

**Issue No. (iv)** - *Whether the suit property is liable to be partitioned and if so what would be the share of the various parties in the suit?*

Issue no.(iv) is decided in favour of the plaintiff and the defendant no.3, holding that the suit property is liable to be partitioned, with the share of the plaintiff, the defendant no.1, and the defendant no.2 being 1/6<sup>th</sup> each in the suit property, while the share of the defendant no.3 being 1/2<sup>nd</sup> share (one half) in the suit property.

**Issue No. (v)** - *Whether the Plaintiff is entitled to a decree of Rendition of accounts of profits against Defendant no.1, as prayed?*

In absence of any defence to the contrary, the plaintiff is held entitled to a decree of rendition of accounts and profits against the defendant no.1, albeit, from the date of the legal notice dated 23.01.2018. This is so, as until the plaintiff prayed for partition of the suit property through the legal notice, it cannot be said that defendant no.1 was not entitled to keep the profits from the property for his own benefit. Being a co-owner of the suit property, he was entitled to the usufruct of the property. It is only with the service of the Legal Notice seeking partition, that the defendant no.1 became no longer entitled to



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keep the usufruct of the suit property exclusively to himself; and he became liable to account for the same to the plaintiff.

### **Relief**

57. Accordingly, a preliminary decree of partition is passed holding that the plaintiff, the defendant no.1, and the defendant no.2, are entitled to 1/6<sup>th</sup> share each in the suit property; while the defendant no.3 is entitled to 1/2 (one half) share in the suit property, that is, Plot No.FA-53 (Old) (New No. F-305), admeasuring 297 sq. yds. situated at Mansarovar Garden, New Delhi.

58. The plaintiff is also held entitled to a decree of rendition of accounts from the defendant no.1 with effect from 23.01.2018 till date. The defendant no. 1 shall, on affidavit, to be filed within eight weeks of this Judgment, disclose to the plaintiff the rent received by him from letting out the portion of the Suit Property in his possession from 23.01.2018 till the date of the judgment, and within eight weeks thereafter, give 1/6<sup>th</sup> share of the same to the plaintiff.

59. The parties shall jointly agree on the division of the suit property in the above-mentioned ratio amongst each other, within a period of eight weeks from today, failing which, either party may seek execution of this decree by way of division of the suit property by metes and bounds or by way of sale thereof, including by way of inter-se bidding.

60. The plaintiff is also held entitled to the costs of the suit against the defendant no.1.



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61. The suit and the counter claim are decreed in the above terms.
62. Let a decree sheet be drawn accordingly.

**NAVIN CHAWLA, J**

**OCTOBER 01, 2024/ns/RN/DG**

*Click here to check corrigendum, if any*