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

%	***Reserved on: 19th May, 2026***

***Pronounced on: 31st August, 2026***

\#	**CNR No : DLHC010414252023**

\+	**RFA 846/2023, CM APPL. 53665/2023 & 32426/2024 and CAV 544/2023**

1. **SUDHIR TREHAN**
S/o Late Shri B.D. Trehan …..Appellant No.1

2. **SMT. ARADHANA TREHAN**
W/o Shri Sudhri Trehan
Both R/o H.No. E-143, Amar Colony,
Lajpat Nagar-IV, New Delhi. ….Appellant No.2

Through: Mr. Bharat Deepak & Mr. Tarun Kapoor, Advocates.

versus

1. **SHRI PRAVEEN TREHAN**
S/o Late Shri B.D. Trehan
R/o 31/22, Old Rajinder Nagar,
New Delhi. ….Respondent No.1

2. **SHRI B.D. TREHAN (SINCE DECEASED)**
…Respondent No. 2

3. **SHRI SUNIL TREHAN**
R/o No. 4/7, West Patel Nagar,
New Delhi.
…Respondent No. 3

Through: Mr. Karan Dua and Mr. Aman Chawla, Advocates for R-1.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

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

**NEENA BANSAL KRISHNA, J.**

1. ***Regular First Appeal*** under Section 96 read with Order 41 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellants against the **Judgment and Preliminary decree of Partition dated 22.09.2023** whereby the learned District Judge has decreed the Suit of the Plaintiff and declared the ***Will dated 23.03.2004*** of Smt. Smt. Krishna Trehan as ***null and void*** and consequently, cancelled the ***Gift Deed dated 18.11.2008*** and passed a **Preliminary Decree of Partition** declaring the shares of the Plaintiff and Defendant No. 3, namely, ***Mr. Sudhir Trehan*** as *one half* in the suit property; and also assailed the ***Order dated 06.05.2022,*** whereby, upon the demise of Defendant No. 1/Sh. B.D. Trehan during the pendency of the Suit, the learned District Judge held that the Suit had abated qua Defendant No. 1.

2. The Plaintiff, ***Mr. Praveen Trehan*** had filed a ***Civil Suit bearing CS DJ 7492/2016*** for *declaring the* ***Will dated 23.03.2004*** of Smt. Smt. Krishna Trehan, as invalid and for *cancellation of the* ***Gift Deed dated 29.09.2008*** executed by ***Mr. Sudhir Trehan***, Defendant No. 3 in favour of his wife, ***Smt. Aradhna Trehan***, Defendant No. 4 and for ***Partition***.

3. The **facts in brief**, as stated in the Plaint, are that ***Late Sh. Hans Raj Trehan***, grandfather of the Plaintiff and Defendant Nos. 2 and 3, and father of Defendant No. 1, was a resident of Pakistan where he owned several movable and immovable properties, which had to be left behind during the

partition, when he along with his family, migrated to India. In lieu thereof, he was allotted a property at **Karbala, Lodhi Road, New Delhi, in 1948**, which remained with him till his demise in 1976.

4. There existed a ***Hindu Undivided Family*** consisting of **Late Sh. Hans Raj Trehan** and other family members. All the male members of the family born thereafter, became coparceners/members of the HUF. The Plaintiff, ***Sh. Praveen Trehan*** and the Defendant Nos. 2 and 3, ***Sh. Sunil Trehan and Sh. Sudhir Trehan respectively,*** who were the sons of the Defendant No. 1, ***Mr. B.D. Trehan***, became the coparceners by birth in the said HUF.

5. The Plaintiff, **Mr. Praveen Trehan** claimed that from the funds of HUF, the Property bearing ***No. 4/7, West Patel Nagar, New Delhi-110008***, was purchased in the year 1956 in the name of Defendant No. 1, ***Mr. B.D. Trehan*** (their father) only out of love and affection and being the youngest member of the family. The Defendant No. 1 was working in the **Post Office** and did not have income to purchase the suit property on his own. It was only from the contributions made by the family members of the HUF including the Plaintiff, that the ***West Patel Nagar Property was purchased from the funds*** of the HUF.

6. After the purchase of the West Patel Nagar Property, ***the entire Ground Floor and the two rooms on the First Floor***, were constructed for the residence and the benefit of the entire family.

7. Since the Property was purchased from the HUF funds, it was always understood and treated to be belonging to the HUF. ***None of the parties ever***

***claimed any exclusive right in the said property*** and resided there and enjoyed the benefits, being the members of HUF.

8. The Plaintiff claimed that a plot admeasuring **100 sq. yds., forming part of property bearing No. E-143, Amar Colony, Lajpat Nagar-IV, New Delhi**, was purchased from HUF funds and contributions made by the family members, in the name of **Smt. Krishna Trehan**, wife of Defendant No. 1, **Mr. B.D. Trehan**, and mother of the Plaintiff and Defendant Nos. 2 and 3. **Late Sh. Hans Raj Trehan**, the paternal grandfather, and **Sh. Jagan Nath Marwah**, the maternal grandfather of the Plaintiff and Defendant Nos. 2 and 3, had ***also contributed*** towards the purchase of the said plot and the construction raised thereon.

9. The Plaintiff asserted that ***Smt. Krishna Trehan was a housewife with no independent source of income*** and had no funds of her own to purchase the property. According to him, the consideration had been paid from HUF funds and the property was purchased in her name ***out of love and affection,*** with the understanding that it would continue to belong to the HUF and ***would not be her individual property***.

10. The Plaintiff further claimed that in **1984, an adjoining plot admeasuring 100 sq. yds.** was acquired in the name of **Smt. Krishna Trehan** from HUF funds, thereby increasing the total area of the **Lajpat Nagar-IV** property **to 200 sq. yds.,** (hereinafter referred to as the *"suit property"*). He asserted that he had also contributed towards its acquisition with assistance from certain family friends, whose amounts were subsequently repaid by him, from his own earnings.

11. The Plaintiff further claimed that after Defendant No. 1, Mr. B.D. Trehan retired as an *Inspector from the Post and Telegraph Department, Government of India in 1986,* additional construction was undertaken at the **West Patel Nagar property,** to meet the growing residential needs of the family. According to him, one room was constructed on the **First Floor in 1987**, followed by further construction of the **First and Second Floors between 1990 and 1993**, entirely from his own funds, after which he shifted to the Second Floor.

12. The Plaintiff stated that he was running a workshop under the name of ***"Trix Electronics"*** from the *Ground Floor of the West Patel Nagar property*. He claimed that, since Defendant No. 1 had already retired and was dependent upon his pension; Defendant No. 2 was employed as a Bank Clerk, and Defendant No. 3 was working as his Assistant, ***the expenditure towards the additional construction at the West Patel Nagar property, was borne by him.***

13. The Plaintiff further claimed that with the growing residential requirements of the family, additional construction was undertaken on the suit property. While construction already existed on a portion thereof, **in 1996, four floors and a *barsati*** were constructed from HUF funds and contributions made by the family members. According to the Plaintiff, ***it was understood that the suit property would continue to belong to the HUF and that all its members would have a share therein.***

14. Upon completion of the construction, Defendant No. 1, Mr. B.D. Trehan, along with his wife, Smt. Krishna Trehan, and Defendant No. 3, Mr.

Sudhir Trehan along with his family, shifted to the suit property in Amar Colony. However, Defendant No. 2 occupied **the First Floor of the West Patel Nagar property**, while the Plaintiff continued to reside on **its Second Floor and use the Ground Floor for his workshop**.

15. In January 2010, Defendant No. 2 sought ***temporary use*** of a portion of the Ground Floor of the West Patel Nagar property for the **engagement ceremony of his son**. The Plaintiff claimed that he permitted such temporary use while ***continuing to retain possession and control*** over the said portion. However, after the ceremony, Defendant No. 2 allegedly ***locked the portion and continued to occupy it,*** despite repeated requests to vacate.

16. In the ***second week of April 2010***, when the Plaintiff again sought restoration of the said portion of West Patel Nagar Property, Defendant No. 2 informed him that Defendant No. 1, Mr. B.D. Trehan, had executed a ***Gift Deed dated 18.11.2008*** in his favour, in respect of the entire West Patel Nagar property and claimed exclusive ownership thereof. The Plaintiff disputed the Gift Deed on the ground that the property belonged to the HUF and that Defendant No. 1 had no authority to transfer it exclusively, in favour of Defendant No. 2.

17. It is claimed that though, the ***Gift Deed was executed on 18.11.2008*** but because of the mala fide intent, the Defendant No. 2 never informed the Plaintiff about it. ***The Gift Deed was thus, liable to be declared as null and void and cancelled.***

18. In the month of January, 2010, the Defendant No. 2 had also informed the Plaintiff that Smt. Krishna Trehan, their mother, had executed a Will in respect of Amar Colony Property, in favour of the Defendant No. 3. ***Though, the copy of the same was never shown to him.***

19. The Plaintiff reiterated that the suit property was HUF property and that Smt. Krishna Trehan had ***no independent ownership*** therein, so as to validly bequeath it by Will. He claimed that the Plaintiff and Defendant Nos. 1 to 3 were each entitled to a 1/4th share in the HUF properties. ***His demand for partition made on 04.05.2010 was, however, refused.***

20. The Plaintiff accordingly sought a declaration that the **Gift Deed dated 18.11.2008** executed by Defendant No. 1 in favour of Defendant No. 2 and **the Will**, if any, executed by Smt. Krishna Trehan in respect of the suit property, ***were null and void***, along with ***consequential cancellation of the Gift Deed***. He also sought a ***Preliminary Decree of Partition***, declaring the Plaintiff and Defendant Nos. 1 to 3 entitled to ***a 1/4th share each in the properties claimed to belong to the HUF***.

21. *The Defendant Nos. 1 and 3, in their Written Statement,* took the preliminary objection that the suit was liable to be dismissed as it was ***based on vague and baseless allegations and was bereft of any material particulars.***

22. It was claimed that the suit was bad for ***non-joinder of proper and necessary parties and if the Plaintiff's case was to be accepted, then the other brothers and sisters of the Defendant No. 1, would also be necessary party to the suit***.

23. It was further asserted that the *court fee* paid was inadequate as the declaration and injunction were being sought in regard to the ***Gift Deed dated 18.11.2008***, which on the face of it has the recorded value of ***Rs.53,68,886/-*** but the Plaintiff has valued the suit qua the Gift Deed as ***Rs.50,00,000***/-. No Court fee has been paid in respect of the *Declaration and Injunction* in respect of the suit property, the value of which is about ***Rs.90,00,000/- in September, 2008***. The Plaintiff is liable to pay *ad valorem* court fees.

24. It was claimed that the suit was contrary to ***Section 4 of the Hindu Succession Act, 1956*** and was liable to be dismissed. The Defendant No. 1, Mr. B.D. Trehan had disowned the Plaintiff, by taking out a ***Public Notice dated 04.01.2010*** and had severed all his relationship because of bad behaviour of the Plaintiff and his wife.

25. Moreover, the Defendant No. 3, Mr. Sudhir Trehan has gifted the entire suit property to his wife, ***Ms. Aradhna Trehan, the Defendant No. 4 vide Gift Deed dated 29.09.2008.***

26. **On merits**, the Defendants denied the Plaintiff's claims. They admitted that the Plaintiff was occupying a small portion of the ***Ground Floor of the West Patel Nagar property***, from where he was running an electronic repair shop, but asserted that such occupation ***was merely permissive and in the nature of a licence***. The remaining portion was stated to be in the possession of Defendant No. 1, who also occasionally stayed with Defendant No. 3 and his family at the suit property.

27. Defendant No. 1 further asserted that he had ***transferred*** the West Patel Nagar property to Defendant No. 2 by way of a ***Gift Deed dated 18.11.2008.*** It was contended that the Plaintiff continued to occupy portions thereof, ***only by virtue of the family relationship*** and as a ***permissive licensee, without any independent right or title in the property.***

28. Defendant Nos. 1 and 3 ***denied the existence of any HUF comprising of the family members***. It was asserted that Defendant No. 1 had been living separately since 1954 and had independent earnings from his service since 20.01.1948, while his brothers, **Mr. Dwarka Dass Trehan** and **Mr. Pyare Lal Trehan**, were separately employed and residing at **Meerut and Model Basti, Delhi**, respectively, and the sisters had been living in their matrimonial homes since marriage. ***The plea of existence of an HUF was denied as false.***

29. Defendant No. 1 asserted that he had purchased **the West Patel Nagar property** in an auction conducted by the **Ministry of Rehabilitation in 1952** from his own earnings, while serving as a **Warrant Officer with the Army**. It was further claimed that the **Ground Floor and part of the First Floor** were constructed in around 1955 at his expense, the remaining **First Floor around 1984**, and **the Second Floor around 1990**. The Defendants accordingly, ***denied the Plaintiff's claim of having contributed towards either the purchase or construction of the property.***

30. Defendant No. 1 further claimed that portions of the **West Patel Nagar property,** including the Ground Floor and subsequently the First Floor, ***had been let out by him and that the rental income was reflected in***

***his individual Income Tax Returns***. He **denied** that the property had been acquired from HUF funds or merely stood in his name as the youngest member of the family.

31. As regards the suit property in Lajpat Nagar, the Defendants similarly asserted that it had been acquired ***by Defendant No. 1 from his own funds,*** *without any contribution from the alleged HUF* or other family members. It was pointed out that at the time of its acquisition, the Plaintiff was about four years old, Defendant No. 2 about nine years old, and Defendant No. 3 was not even been born, ***thereby disputing the claim that they had contributed towards its purchase or construction.***

32. Defendant No. 1 asserted that the suit property had been purchased by him in the name of his wife, **Late Smt. Krishna Trehan**, to provide her with financial security and a source of income, and that it was always treated as her individual property.

33. It was stated that **the Ground Floor, First Floor and *Barsati* were constructed by 1969** and thereafter let out, with the rental income being reflected in her **Income Tax Returns**. The family occupied the Ground Floor for some time ***between 1976 and 1978,*** after which the property was again ***let out till 1995***, when **Defendant No. 3** shifted there and carried out additions and renovations from his own funds.

34. The Defendants denied that either the purchase or construction of the suit property was financed by HUF funds or by contributions from ***Late Sh. Hans Raj Trehan***, the Plaintiff, Defendant Nos. 2 and 3, or ***Sh. Jagan Nath***

***Marwa*h. It was further asserted that the Plaintiff's claim was barred under *Section 3(2)(a) of the Benami Transactions (Prohibition) Act, 1988.***

35. **Defendant No.2 Shri Sunil Trehan** had already settled the matter and had given a ***Statement on 26.09.2018*** that he was not making any claim in respect of the suit property.

36. The Plaintiff in the ***Replication***, refuted the defence taken in the ***Written Statement*** by the Defendants and reiterated the assertions made in the Plaint.

37. From the pleadings of the parties, the Issues were framed, which are as under:-

> *(i) Whether the Will Dated 23.03.2004 is liable to be declared as illegal & void? OPP*
>
> *(ii) Whether the gift deed dated 29.09.2008 is liable to be declared as illegal & void? OPP*
>
> *(iii) Whether the plaintiff is entitled to 1/4th share in the suit property bearing no. E-143, Amar Colony, Lajpat Nagar-IV? OPP*
>
> *(iv) Relief.*

38. **The Plaintiff, Sh. Praveen Trehan**, examined himself as PW-1 and tendered his evidence by way of Affidavit, Ex.PW-1/A, reiterating the assertions made in the Plaint.

39. The **Defendants examined Defendant No. 3, Sh. Sudhir Trehan**, **as DW-1,** who tendered his evidence by way of Affidavit, Ex.DW-1/A. He relied upon, inter alia, the Sale Deed dated 18.12.1967, Ex.PW-1/DA; Lease

Deed dated 22.04.1965, Ex.PW-1/DC; Mutation Letter dated 22.04.1968, Ex.DW-1/1; Revised Lease Deed dated 20.04.1985, Ex.PW-1/DB; Conveyance Deed, Ex.PW-1/DE; Death Certificate of Smt. Krishna Trehan, Ex.DW-1/8; Will dated 23.03.2004, Ex.PW-1/DF; Gift Deed dated 29.09.2008, Ex.DW-1/9; and Public Notice dated 04.01.2010, Ex.DW-1/10.

40. **DW-2 Ms. Roopa Singh,** one of the attesting witnesses to the Will dated 23.03.2004, Ex.PW-1/DF, tendered her evidence by way of Affidavit, Ex.DW-2/1, and deposed regarding the execution and attestation of the Will by her.

41. The ***learned District Judge*** on appreciation of the evidence, held that the ***Will dated 23.03.2004, Ex.PW-1/DF,*** executed by Smt. Krishna Kumari in favour of the Defendant No. 1, Mr. B.D. Trehan, was shrouded with suspicious circumstances and also did not find the testimony of DW-2, Smt. Roopa Singh, as creditworthy.

42. The circumstances of the Will being drafted by Mr. B.D. Trehan, husband of Smt. Krishna Kumari and non-examination of Dr. M.K. Gupta, Cardiologist, who certified about the medical fitness of Smt. Krishna Kumari, were all considered and ***it was held that the Will dated 23.03.2004, Ex.PW-1/DF, was not genuine.***

43. Consequently, the **Gift Deed dated 29.08.2008, Ex.DW-1/9** executed by the Defendant No. 3, Mr. Sudhir Trehan in favour of the Defendant No. 4, Ms. Aradhana Trehan, his wife, on the basis of the Will, was also held to be **null and void.**

44. It was further held that there was ***no evidence*** to show that the suit property had been purchased from HUF funds. It was thus, concluded that the Plaintiff and the Defendant No. 3 were entitled to **one half share in the suit property and the preliminary decree was accordingly passed,** ***vide*** **Judgment dated 22.09.2023.**

45. Aggrieved by the said Judgment, ***the present Regular First Appeal has been preferred.***

46. ***The grounds of challenge*** are that the preliminary decree of partition is ***erroneous and contrary*** to the record. The Judgment has been delivered on the Issues originally framed on 13.05.2019 and **not on the reframed additional Issue framed on 06.05.2023**. The Judgment is, therefore, ***vitiated and not sustainable***, in terms of under ***Order XIV Rule II read with Order XX Rule V CPC*** which mandates that the findings on all the Issues, must be given. No opportunity had been given to either party to lead any evidence on the additional Issue, ***after it was framed on 06.05.2023.***

47. It has further not been appreciated that the entire case of the Plaintiff was based on the alleged claim of suit property being purchased from HUF Funds, though he ***miserably failed to prove the alleged plea of HUF.***

48. The Plaintiff had not approached the Court, with clean hands but had filed ***the case on false, frivolous, baseless and untenable plea of HUF***. The Suit should have been dismissed on this premise itself and the Court cannot assist a person, whose case is based on falsehood.

49. Furthermore, it has not been appreciated that Smt. Krishna Kumari had left her last ***Will dated 23.03.2004, Ex.PW-1/DF***, which was duly

proved by the Appellants and the attesting witness, as per ***Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act***.

50. The ***onus of proving*** the suspicious circumstances around the Will, was ***on the Plaintiff***, which he miserably failed to discharge, in accordance with law. The ***learned District Judge wrongly*** concluded that the Will was not genuine and cannot be relied upon when in fact, the Will ought to have been held as a genuine document. ***The onus to prove the Will propounded by the Appellant as not genuine, was on the Plaintiff, which he had failed to plead, prove or discharge.***

51. It has *not been appreciated* that there were *no averments* in the amended Plaint about the alleged suspicious circumstances in regard to the ***Will of Smt. Krishna Kumari***. In the absence of pleadings, no evidence could have been led and thus, the finding of the learned Trial Court that the *Will was not genuine because of the alleged suspicious circumstances,* ***is contrary to well settled law and the facts, in the present matter.***

52. It is further asserted that the circumstances of the *margin left on top of the page; the Will being hand written by Mr. B.D. Trehan, husband of Smt. Krishna Devi and the Will being laminated, being termed as suspicious circumstances,* is **not tenable**. The Defendant/Appellant as DW-1 had explained in his cross-examination that he cannot produce the second attesting witness or Dr. M.K. Gupta, in his evidence. *The Will as per Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, is required to be proved by examining one of the attesting witnesses and the*

*examination of both the witnesses to prove the Will, is not the requirement of law.*

53. The circumstance of the signatures by different persons/witnesses on the Will in different pen and ink, ***cannot be termed as a suspicious circumstance.*** There is no requirement under law that all the persons and witnesses signing the Will, should do so with the same pen and ink or that they cannot use different pen.

54. Furthermore, drawing an ***adverse inference for the non-summoning of the second attesting witness or Dr. M.K. Gupta***, is erroneous. The Plaintiff/Respondent could have also summoned these two witnesses, but he did not do so because he was conscious that the Will was genuine.

55. It has been further contended that the defence of the Appellant was that the suit property had been purchased by Mr. B.D. Trehan in the name of his wife, Smt. Krishna Kumari, after paying the entire sale consideration. In these circumstances***, it was natural for Mr. B.D. Trehan to have handwritten the Will, on behalf of his wife.*** The Will was, therefore, asserted to be a ***valid and genuine document which ought to have been relied upon, and the Suit filed by the Plaintiff, should have been in dismissed.***

56. The Will has been discarded without *any positive finding that Smt. Krishna Kumari did not intend or desire to bequeath the suit property exclusively in favour of the Appellant, Mr. Sudhir Trehan*. The learned Trial Court also *failed to appreciate that the Will reflected her intention* to exclude the other legal heirs and bequeath the suit property solely to the

Appellant, particularly when Mr. B.D. Trehan had severed his relations with the Plaintiff and disinherited him from his estate.

57. Furthermore, there were no discrepancies in the oral evidence of the Defendant's witnesses; if at all, the discrepancies noted by the learned District Judge, *were minor and bound to happen over the passage of time and could not have been held fatal to the case of the Defendant No.3&4/Appellants*.

58. Moreover, on demise of the Defendant No. 1, Mr. B.D. Trehan, there were two legal heirs i.e. the Plaintiff and the Defendant No. 3 already on record *on the date of his demise and only a formal Application was required to be filed for bringing his LRs on record.* The Suit could not have been abated and, therefore, the observations in Order dated 06.05.2022 that the Suit against the Defendant No. 1 stood abated, was incorrect.

59. The Settlement between the Plaintiff and the Defendant No. 2 Sh. Sunil Trehan was arrived on 26.09.2018. However, after the demise of their father, Mr. B.D. Trehan/Defendant No. 1, the impleadment of the Defendant No. 2 was ***mandatory and necessary for just and proper decision of all the disputes in the matter.***

60. It has not been appreciated that at the time of demise of the Defendant No. 1, Mr. B.D. Trehan, he was entitled to 1/4th share in the suit property and on his demise, his 1/4th share had to go to the three legal heirs in equal share i.e. 1/3rd of 1/4th each. *The Plaintiff cannot become entitled to one half share in the suit property, as has been held by the learned Trial Court.*

61. The Suit of the Plaintiff ***was barred by limitation as Smt. Krishna Kumari expired on 26.09.2005,*** but the Suit for Partition had been filed on 13.05.2010 i.e. ***after 4 years and 4 months, from her death.*** There is no explanation given by the Plaintiff for the delay. A hyper technical view has been taken in deciding the case and the evidence of the Defendants/Appellants, has not been appreciated in the right perspective.

62. ***It is, therefore, submitted that the impugned Judgment be set-aside and the Suit of the Plaintiff, be dismissed.***

63. The Respondent No. 1/Plaintiff in his ***Written Submission***s, has reaffirmed that the testimony of the witnesses, has been rightly appreciated by the learned District Judge. It is further reiterated that the Will had not been proved in accordance with law, and there were suspicious circumstances, as had been noted by the Learned District Judge.

64. It is further asserted that the Issues reframed on 06.05.2023 substantially ***related to the Will, Gift Deed and Preliminary Decree of Partition,*** which were already covered by the Issues framed on 13.05.2019. The only additional Issue was ***whether the Plaintiff was entitled to a final Decree of Possession,*** which did not alter the nature of the evidence already led by the parties. The objection regarding inconsistency in the framing of Issues is, therefore, ***stated to be without substance and merely intended to prolong the litigation,*** which the Plaintiff has been pursuing since 2010, to secure his share in the suit property.

65. It is submitted that there is ***no merit in the present Appeal*** and is liable to be dismissed.

66. The Appellants/Defendants in the ***Written Submissions*** have essentially reiterated the grounds as stated in the Appeal.

**Submissions heard and record perused.**

67. **Plaintiff / Respondent No.1, Sh. Praveen Trehan** had filed a ***Suit for Partition, Declaration of the Will dated 23.03.2004*** of his ***mother Smt. Krishna Trehan*** bequeathing the suit property to the **Appellant / Defendant No.3 Sh. Sudhir Trehan**, ***as null and void*** and sought **Partition of the suit property,** ***which has been decreed in his name.***

68. It is not in dispute that the **initial 100 sq. yds**. forming part of the suit property, was purchased in the name of ***Smt. Krishna Trehan vide Sale Deed dated 18.12.1967***. The construction was thereafter, raised on the property, which remained tenanted till around 1976, whereafter ***Defendant No. 1, Sh. B.D. Trehan,*** along with ***Smt. Krishna Trehan,*** shifted there. ***Defendant No. 3, Sh. Sudhir Trehan,*** also subsequently, shifted to the suit property along with his family. It is further undisputed that the ***adjoining 100 sq. yds***. was acquired ***in 1984*** in the name of ***Smt. Krishna Trehan***, thereby making the ***total area of the suit property to 200 sq. yds.***

69. **Plaintiff Sh. Praveen Trehan** asserted that although the suit property stood in the name of his mother, **Smt. Krishna Trehan**, she was the housewife with no independent source of income. According to him, the ***consideration for its purchase*** came from the funds of the ***HUF of Late Sh. Hans Raj Trehan***, who had migrated from Pakistan. At the time of Partition, he was allotted property at ***Karbala, Lodhi Road, New Delhi***, in *lieu* of the properties left behind.

70. He claimed that the said **HUF continued to exist** after the death of **Sh. Hans Raj Trehan in 1976** and that the suit property had been acquired from HUF funds.

71. Though the Plaintiff had asserted that there existed an HUF, but aside from a bald assertion, there was no evidence whatsoever, of there being an HUF of Shri Hansraj Trehan ever in existence or that there were any HUF funds.

72. In his cross-examination as PW-1, **Plaintiff Sh. Praveen Trehan** admitted that ***he did not know*** *the name of the alleged HUF, whether it was assessed to Income Tax or maintained any Bank Account, or what became of it after the death of Sh. Hans Raj Trehan in 1976*. He ***was also unaware of any other property acquired*** from the alleged HUF funds. PW-1 also ***admitted that he had no documentary evidence*** to establish the existence of the alleged HUF funds. Though he admitted that the initial 100 sq. yds. of the suit property stood in the name of his mother, Smt. Krishna Trehan, ***he was unable to substantiate the source of funds for its purchase.***

73. As stated by the Defendants in their Written Statement, at the time of acquisition of the suit property, the Plaintiff was about four years old, Defendant No. 2 about nine years old, while Defendant No. 3 had not even been born. ***These admissions, coupled with his inability to identify any source or corpus of the alleged HUF, fail to substantiate the plea that the suit property had been acquired from HUF funds.***

74. *There is not an iota of evidence that the properties were ever pooled in the HUF funds.* ***The Ld. District Judge therefore, rightly held that there existed no HUF or HUF Funds.***

75. ***The suit property*** *had admittedly been purchased by B.D. Trehan in the name of his wife, Smt. Krishna Trehan.* ***Section 3(2) of the Benami Transactions (Prohibition) Act, 1988*** **provided that where a property was purchased by a person in the name of his wife, it shall be presumed, unless the contrary is proved, that the property had been purchased for her benefit.**

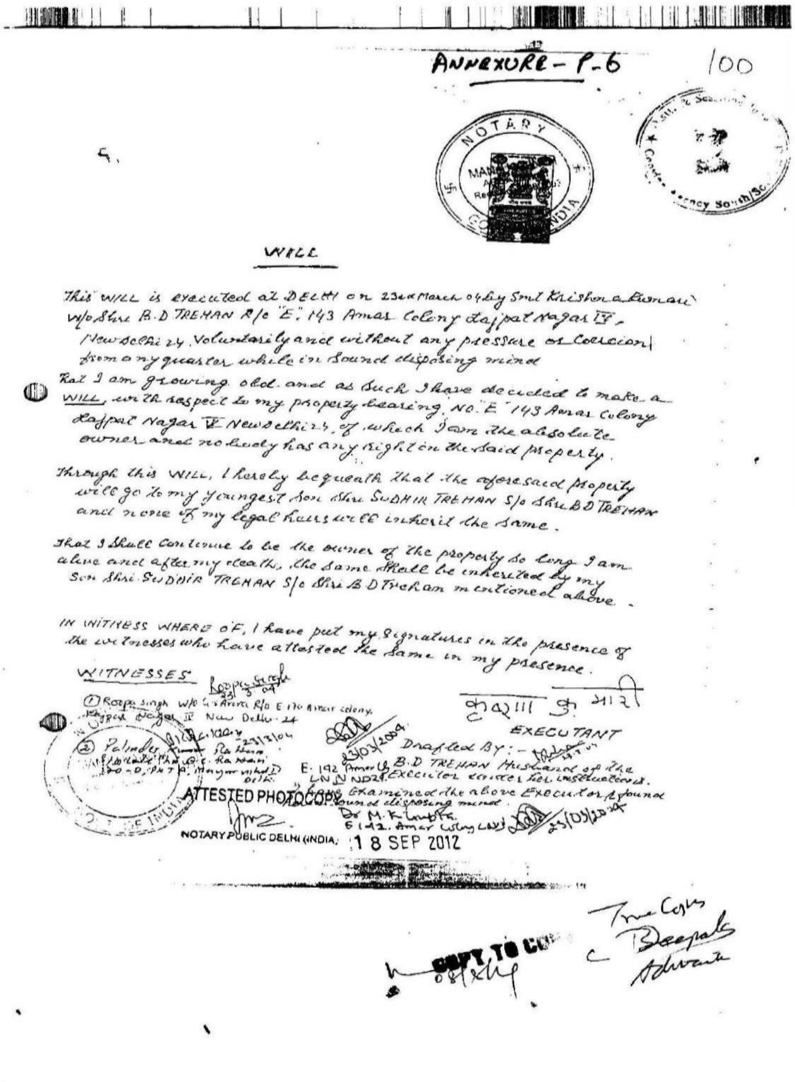
76. Merely because the funds for purchase of suit property were given by Sh. B. D. Trehan, husband of Smt. Krishna Trehan, ***then too, it would not make it an HUF property, especially when the existence of HUF itself, has not been proved.***

77. Significantly, PW-1 also admitted that the suit property stood in the name of ***his mother, Smt. Krishna Trehan***, and that she had the right and capacity to bequeath the same. The documentary title also stood in her name. ***Smt. Krishna Trehan was the owner of the suit property and, upon her demise, was survived by her husband, Sh. B.D. Trehan/Defendant No. 1, and her three sons, namely the Plaintiff, Defendant No. 2 and Defendant No. 3. Defendant No. 4, Smt. Aradhana Trehan, is the wife of Defendant No. 3.***

78. Once having concluded that the mother Smt. Krishna Trehan was the exclusive owner of the suit property, then next comes the question about the validity of the ***Will dated 23.03.2004 Ex.PW-1/DF*** executed by Smt.

Krishna Trehan in the name of Defendant No.3 / Appellant No.1 Sh. Sudhir Trehan.

79. The Plaintiff/Respondent No. 1 challenged the ***Will dated 23.03.2004, Ex.PW-1/DF, as null and void.*** To appreciate the circumstances noted to disbelieve the Will, it would be convenient to reproduce the Will, which is as under:



ANNEXURE – P-6 100

NOTARY

WILL

This WILL is executed at DELHI on 23rd March 04 by Smt Krishna Kumari W/o Shri B.D TREHAN R/o "E" 143 Amar Colony Lajpat Nagar IV, New Delhi 24. Voluntarily and without any pressure or coercion from any quarter while in sound disposing mind

That I am growing old and as such I have decided to make a WILL, with respect to my property bearing No. "E" 143 Amar Colony Lajpat Nagar IV New Delhi 24, of which I am the absolute owner and nobody has any right in the said property.

Through this WILL, I hereby bequeath that the aforesaid property will go to my youngest son Shri SUDHIR TREHAN S/o Shri B D TREHAN and none of my legal heirs will inherit the same.

That I shall continue to be the owner of the property so long I am alive and after my death, the same shall be inherited by my son Shri SUDHIR TREHAN S/o Shri B D Trehan mentioned above.

IN WITNESS WHERE OF, I have put my signatures in the presence of the witnesses who have attested the same in my presence.

WITNESSES

(1) Roopa singh W/o G.S Arora R/o E 170 Amar colony, Lajpat Nagar IV New Delhi-24

(2) Palinder Kumar Rattan

E. 192 Amar Colony LN IV ND24

EXECUTANT

Drafted By:- B.D TREHAN Husband of the Executor under her instructions.

I have examined the above Executor & found sound disposing mind.

Dr M.K Gupta

E-142, Amar Colony

23/03/2004

ATTESTED PHOTOCOPY

NOTARY PUBLIC DELHI (INDIA) 18 SEP 2012

COPY TO CO

True Copy

Advocate

80. The two requirements are relevant for proving a Will are: its due execution in terms of ***Section 63 of the Indian Succession Act, 1925***, and its proof in accordance with ***Section 68 of the Indian Evidence Act, 1872***. Section 63 requires the Will to be signed by the testator and attested by two or more witnesses, whereas Section 68 requires that at least one of the attesting witnesses be examined to prove its execution, if such witness is alive, subject to the process of the Court and capable of giving evidence.

81. **To prove the execution of Will**, Defendant No. 3/Appellant No. 1, Sh. Sudhir Trehan, while deposing as DW-1, stated that his shop was situated on the Ground Floor and his residence on the First Floor of the suit property. He admitted that ***he was not present*** when his mother, Smt. Krishna Trehan, executed ***the Will dated 23.03.2004, Ex.PW-1/DF***. He further stated that, at the relevant time, he believed himself to be in his shop, while his wife had gone to the market with their children, and that ***he was unaware that his mother was executing the Will.***

82. The ld. District Judge did not find the testimony of DW-1 inspiring for the reason that despite it being an old event, he remembered with precision. Pertinently, ***DW-1 admitted that Sh. Palinder Kumar Rattan***, one of the attesting witnesses to the Will, was his friend and had visited him both before and after its execution. However, ***despite such acquaintance***, Sh. Palinder Kumar Rattan ***neither informed him that Smt. Krishna Trehan was executing a Will nor disclosed*** that he had visited the suit property for the purpose of attesting the same.

83. Learned District Judge noted that testimony of DW-1 Sh. Sudhir Trehan ***as self-demolishing and circumstances*** which emerge from his testimony, ***raises a word of caution and calls for a closer scrutiny to the execution of the Will.***

84. The Will ***dated 23.03.2004, Ex.PW-1/DF***, as put to the Plaintiff during his cross-examination, is a ***single-page laminated handwritten document.*** A bare perusal thereof, shows that ***nearly one-third*** of the upper portion of the page has been ***left blank,*** before the recitals of the Will begin.

85. ***This circumstance is unusual,*** particularly since no satisfactory explanation was offered for leaving such a substantial portion of the page blank. This circumstance ***assumes significance*** as the Will was admittedly drafted by Defendant No. 1, Sh. B.D. Trehan, the husband of Smt. Krishna Trehan. The Plaintiff had deposed that Defendant No. 1, Sh. B.D. Trehan, ***used to retain blank papers bearing the signatures of Smt. Krishna Trehan*** for use in connection with matters concerning the suit property before **Government authorities.** The execution of the Will, thus raised cogent concerns.

86. The learned District Judge, therefore, rightly ***found that the possibility of the Will having been prepared on a pre-signed blank paper, could not be ruled out.***

87. This is also evident from the manner, in which the Will is written and the latter part where the witnesses have signed and the endorsement of the Doctor is made, ***is not in a natural flow, but seems to have been adjusted to***

***fit in a paper, clearly reflecting a document having the signatures, has been created subsequently.***

88. Furthermore, Section 68 of the Indian Evidence Act, 1872 provides that a document which is required by law to be attested, ***cannot be used in evidence unless at least one attesting witness has been called for the purpose of proving its execution***, provided such witness is alive and capable of giving evidence, subject to the process of the Court.

89. In *Daulat Ram & Ors. v. Sodha & Ors*., (2005) 1 SCC 40, the Supreme Court observed that a Will, being a document required by law to be attested, cannot be used in evidence ***unless at least one attesting witness has been examined to prove its execution***, provided such witness is alive, subject to the process of the Court and capable of giving evidence.

90. Furthermore, in *Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91, para 10, where the Supreme Court explained that Section 68 requires an available attesting witness to be necessarily examined before an attested document can be used in evidence. It further clarified that at least one attesting witness must prove the due execution of the Will in the manner contemplated by Section 63 of the Succession Act.

91. To prove the Will in terms of *Section 68 of the Indian Evidence Act, 1872*, the Defendants examined ***Ms. Rupa Singh as DW-2***, one of the attesting witnesses. She deposed that ***on 23.03.2004, she was called by Smt. Krishna Trehan*** to the suit property, where Sh. B.D. Trehan, Dr. M.K. Gupta and Sh. Palinder Kumar Rattan were already present. According to her, the Will was executed ***voluntarily, without any force, fraud, pressure***

***or coercion,*** and Smt. Krishna Trehan was in ***a sound state of mind and understood the consequences of executing the Will***.

92. DW-2 identified the signatures of ***Smt. Krishna Trehan at Point 'A'*** and stated that the Will had been read over to her, by ***Sh. B.D. Trehan in English as well as in the vernacular.*** She further deposed that Sh. B.D. Trehan had stated that he had drafted the Will, ***at the request of his wife***. After Smt. Krishna Trehan signed the Will, ***DW-2 signed as an attesting witness at Point 'B'***, followed by ***Sh. Palinder Kumar Rattan at Point 'C'.*** She also identified the signatures of ***Dr. M.K. Gupta at Point 'D'*** and of ***Sh. B.D. Trehan at Point 'E'***, and stated that no other person was present at the time.

93. In her cross-examination, however, DW-2 stated that although Smt. Krishna Trehan had called her to the suit property***, she came to know about the execution of the Will, only after reaching there***. She further admitted that ***her name and address had already been written on the Will*** before she signed it, but ***she did not know who had written them.*** She was also ***unable to state who had written the endorsement*** relating to Dr. M.K. Gupta or whether the said endorsement was already present, when she signed the Will.

94. From her admission, it is quite evident that the Will was already prepared at the time, when she reached the suit premises. ***She may have signed the Will, but the circumstances clearly reflect that the Will had been prepared, before she had reached the house of the Appellant.***

95. The testimony of DW-2 is ***not convincing*** about the fact that the document having been executed ***during the lifetime of Smt. Krishna Trehan*** and she had ***put her signatures, in the presence of two attesting witnesses.*** Significantly, even though Sh. Palinder Singh Rattan happens to be a close friend of Appellant No.1, ***he has not been examined***. While there is no requirement under ***Section 68 of Indian Evidence Act*** to examine both the witnesses, ***but the close proximity of Defendant No.3 / Appellant No.1 to Sh. Palinder Singh Rattan, made him a more natural witness to have been examined during the evidence.***

96. The next significant aspect is **Dr. M. K. Gupta**, who had examined Smt. Krishna Trehan and certified about fit condition of her health, to execute the Will. ***Interestingly, DW-1 had admitted that Dr. M. K. Gupta was not their regular treating Doctor, but was a Cardiologist, who was living in their neighbourhood.***

97. Pertinently, had he been a witness, who had ***genuinely examined*** the Smt. Krishna Trehan, the endorsement about her fit condition would have been made by him rather than ***it already being endorsed*** by Sh. B. D. Trehan, husband of Smt. Krishna Trehan. *The very fact that endorsement had already been written, when Dr. M. K. Gupta has signed on it, creates a doubt if he actually examined Smt. Krishna Trehan to certify about her fitness, or merely signed a Will already prepared by Mr. B.D. Trehan.*

98. Learned District Judge, while highlighting all the circumstances, ***rightly held that the Will was manipulated on the blank signed paper of***

***Smt. Krishna Trehan as available with Mr. B. D. Trehan and was not a genuine document and rightly declared it as null and void.***

99. Once the **Will dated 23.03.2004, Ex.PW-1/DF** was declared ***as null and void***, the ***Gift Deed dated 29.09.2008, Ex.DW-1/9,*** executed by Appellant No.1 in favour of Defendant No.4 Smt. Aradhana Trehan, his wife, ***automatically gets vitiated***, for he could not have gifted a property, in respect of which ***he did not have absolute ownership***. The Gift Deed can be held valid, ***only in respect of his half-share***, which he has inherited on the demise of his mother Smt. Krishna Trehan, ***but not in respect of the half-share,*** which has devolved on the Plaintiff upon the demise of Smt. Krishna Trehan.

100. Having held that there was no Will executed by Smt. Krishna Trehan, on her demise, ***the suit property was inherited by her husband Sh. B. D. Trehan and her two sons, who were Defendant Nos.2 and 3.*** Insofar as Defendant No.2 Shri Sunil Trehan is concerned, he had already settled the matter and had given a Statement that he was not making any claim in respect of the suit property. Therefore, there remained only three claimants.

101. **After demise of Sh. B. D. Trehan**, there survived only two Legal Heirs i.e. Plaintiff / Respondent No.1 and Defendant No.3 / Appellant No.1. Thereby, Ld. District Judge has rightly granted half equal shares in the suit property to both, i.e. Plaintiff and Defendant No.3.

102. The Appellant had taken an objection that the Issues were reframed **on 06.05.2023**, but the findings have been given on the Issues framed earlier **on 13.05.2019**, thereby vitiating all the findings.

103. To appreciate this contention, the issues framed on two dates are reproduced as under:

**Issues framed on 13.05.2019**

*(i) Whether the Will dated 23.03.2004 is liable to be declared as illegal and void? OPP*

*(ii) Whether the Gift Deed dated 29.09.2008 is liable to be declared as illegal and void? OPP*

*(iii) Whether the Plaintiff is entitled to 1/4th share in the suit property bearing No. E-143, Amar Colony, Lajpat Nagar-IV, New Delhi? OPP*

*(iv) Relief.*

**Issues reframed on 06.05.2023**

*(i) Whether the Will dated 23.03.2004 of Smt. Krishna Trehan is genuine or not? Onus to prove upon respective parties.*

*(ii) Whether the Gift Deed dated 29.09.2008 is liable to be declared as illegal and void? OPP*

*(iii) Whether the Plaintiff is entitled to a Preliminary Decree of Partition as prayed for in Clause (cb)? OPP*

*(iv) If the answer to Issue No. (iii) is in the affirmative, whether the Plaintiff is entitled to a Final Decree of Partition? OPP*

*(v) Relief.*

104. The Respondent, however, has contended that ***there is no substantial difference between the Issues originally framed on 13.05.2019 and those reframed on 06.05.2023.*** According to the Respondent, Issues No. 1 to 3

essentially ***remained the same and only their language and onus were modified***. It is further contended that the Issues were reframed in the presence of the parties and, thereafter, the Appellants neither sought permission to ***lead any additional evidence nor sought to file any additional written submissions, but proceeded to address arguments on the merits.***

105. The aforesaid comparison would make it clear that the all ***the issues were the same though differently worded and the only new issue was whether the parties are entitled to decree of final partition, which is yet to be considered.*** There is no prejudice caused to the parties, meriting any interference on this ground.

**Conclusion:**

106. There is **no infirmity in the reasoning given by the learned District Judge** to hold the Will as **null and void** and partitioning the suit property in **two equal shares** between Resopndent No.1 / Plaintiff and Appellant No.1 / Defendant No.3.

107. There is **no merit** in the present Regular First Appeal, which is hereby, **dismissed**. Pending Applications are also disposed of.

**(NEENA BANSAL KRISHNA)**
**JUDGE**

**AUGUST 31, 2026**/*RS/R*