



2025:DHC:10561-DB



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

Date of Decision: 19.11.2025

+ RFA(OS) 67/2025 and CM APPL. 66314/2025

MANASH SARKAR & ORS.

.....Appellants

Through: Ms. Geeta Luthra, Sr. Adv. with
Mr. Ashok K Singh, Mr.
Deepak Kumar, Ms. Samridhi
Singh, Mr. Anant Roy, Mr.
Rishabh Dahiya, Ms.
Prashansika Thakur, Advs.

versus

SHUKLA SARKAR

.....Respondent

Through: Mr. S.K. Bhaduri, Ms.
Shreyangana Bag, Ms. Neetu
Gupta, Mr Prem Prakash, Advs.
with Respondent in-person

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T (O R A L)

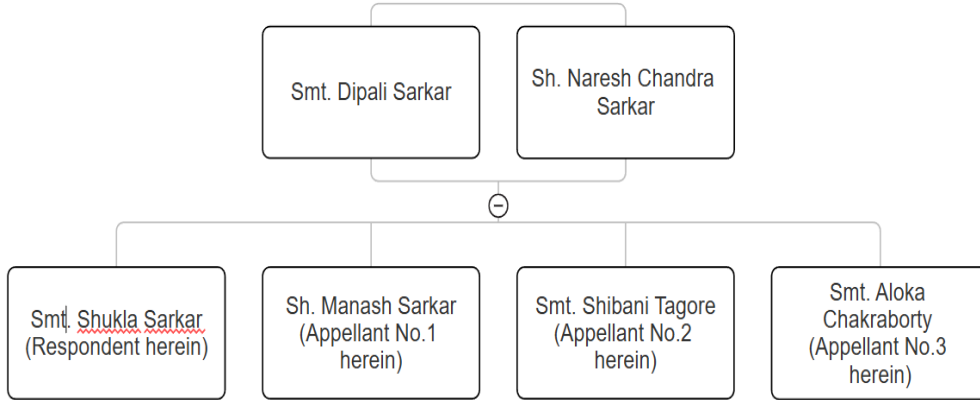
ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellants assail the correctness of the order dated 28.02.2025 and Preliminary Decree for partition of the property [hereinafter referred to as 'Impugned Order'], whereby the parties were held entitled to 1/4th share over the property bearing no. F-1189, Chittaranjan Park, New Delhi-110019 [hereinafter referred to as 'suit property'].

2. In order to comprehend the controversy involved in the present matter, the genealogy and brief facts are required to be considered.



3. The genealogy of the family reads as under:



4. The suit property originally belonged to late Sh. Naresh Chandra Sarkar [hereinafter referred to as ‘NCS’], who died on 03.12.2015. Smt. Dipali Sarkar [hereinafter referred to as ‘Dipali’], the widow of NCS, exclusively claims the suit property by virtue of Will dated 03.12.2023, allegedly executed by NCS. The Respondent/Smt. Shukla Sarkar, one of the daughters of NCS and Dipali, filed a suit for partition while impleading her mother/ Dipali and her three siblings. On the other hand, Dipali filed a probate petition exclusively claiming ownership over the suit property. In the probate petition, the Respondent had even disputed the Will allegedly executed by NCS. During the pendency of the suit for partition, Dipali died on 07.05.2021.

5. The Respondent filed an application for permission to amend the plaint while claiming that after the death of her mother/Dipali, she had become the owner to the extent of 1/4th share of the suit property and thus also prayed for the deletion of her mother’s name. It was



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claimed by the Respondent that her mother/Dipali died intestate. The other siblings of the Respondent filed a reply to the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'], while claiming that Dipali had left behind a Will dated 11.03.2021 bequeathing her property in favour of the Appellant No.1/Sh. Manash Sarkar. The aforesaid application for permission to amend the plaint was allowed.

6. Thereafter, an opportunity was granted to the Appellants to file Written Statement to the amended plaint, which although was filed on 10.09.2024, but was not within the prescribed time, since the counsel for the Appellants failed to remove the objections therein. Ultimately, the aforesaid Written Statement was taken off the record *vide* order dated 12.03.2025 passed by the learned Joint Registrar.

7. Subsequently, the Respondent filed an application to pass a decree under Order XII Rule 6 of the CPC in the suit for partition. The Appellants again failed to file reply to the said application and thereafter, their right to file reply to the application was forfeited on 22.04.2025.

8. By the Impugned Order, the learned Single Judge has proceeded to pass a Preliminary Decree under Order XII Rule 6 of the CPC declaring that the Respondent and her three siblings are co-owners of the suit property i.e. 1/4th share each.

9. Heard learned counsel representing the parties at length and with their able assistance, perused the paperbook.

10. Order XII Rule 6 of the CPC enables the Court to pass a



judgment based on admissions made by a party at any stage of the suit. Such admissions can be oral or written; could either be in pleadings or otherwise. It is only an enabling provision to pass a decree based on admissions. It is settled jurisprudence that such admission is required to be unequivocal, unambiguous, categorical and crystal clear; it will be fair only to infer the parties' admission based on what they submit affirmatively and explicitly.

11. In the present case, while filing reply to the application under Order VI Rule 17 of the CPC, the Appellants had set up the Will of Dipali exclusively bequeathing the property in favor of the Appellant No.1. Copy of the Will along with reply to the said application was also filed. Moreover, the Respondent disputes the correctness of Will dated 03.12.2013 allegedly executed by NCS, which is also pending adjudication.

12. In such circumstances, passing of a preliminary decree for partition in absence of clear and categorical admission on the part of the Appellants was not called for. The Supreme court not long back in ***Ranjit Singh v. State of Uttarakhand***¹ had held that even when the defendant has not filed the Written statement, his right to cross-examine the plaintiff witnesses is not foreclosed. The relevant portion of the decision for easy reference is extracted herewith:

“5.....At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex-parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as

¹ 2024 INSC 724



the law of limitation.....”

13. It is evident from reading of order dated 12.03.2025 passed by the learned Joint Registrar that the Written Statement to the amended plaint was filed, which was under objection and the objection could be removed. In addition, the Appellants had also changed their counsel. Moreover, the original Written Statements to the amended plaint filed by Dipali, Appellant No.1/Sh. Manash Sarkar, Appellant No.2/Smt. Shibani Tagore and Appellant No.3/Smt. Aloka Chakraborty were already part of the record, where the claim of the Respondent was seriously contested. The learned Single Judge, before passing the Impugned Order was supposed to appreciate that many disputed questions of fact called for adjudication, and such judicial findings could not be dispensed only on account of failure to file written statement to the amended plaint. Where substantial justice is at stake, technicalities must give way to ensure that the litigant is afforded sufficient opportunity to defend. The present controversy must be tested on the said principle. It was categorically held in *Asma Lateef v. Shabbir Ahmad*².

“17. What emerges from a reading of Balraj Taneja (supra), with which we wholeheartedly concur, is that only on being satisfied that there is no fact which need to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. Balraj Taneja (supra) also lays down the law that provision of Rule 10 of Order VIII, CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.

18. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted,

² [2024] 1 S.C.R. 517



it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Rule 5 of Order VIII and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with section 58 of the Indian Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim.”

14. The Supreme Court in *M/s. Anvita Auto Tech Works Pvt. Ltd. v. M/s. Aroush Motors*³. While upholding the aforesaid, laid down that the failure to file a written statement within the time stipulated under Rule 1(1) of Order VIII of the CPC cannot result in denial of the substantial right of defence through cross-examination.

15. The present controversy can be concluded in words of the Hon’ble Mr. Justice V.R. Krishna Iyer:

“Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It is the handmaid of justice and not its mistress”

16. Keeping in view the aforesaid facts, the present Appeal is allowed. The Impugned Order is hereby set aside and the suit is restored to its original number.

17. The parties, along with their respective counsel, are directed to appear before the learned Single Judge on 23.12.2025

³ 2025 INSC 1202



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18. The learned Single Judge is requested to proceed to decide the matter afresh.

19. Given the peculiar facts of the case, the Appellants are granted opportunity to file their amended Written Statement within a period of one month from today, subject to payment of costs in the sum of Rs.20,000/- payable directly to the Respondent.

20. The present Appeal, along with the pending application, stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 19, 2025

jai/kb