



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

Judgment reserved on: 28th March, 2026
Judgment pronounced on: 24th April, 2026

+ **CS(OS) 1558/2003**

ASHISH TEWARI

.....Plaintiff

Through: Mr. Preetjeet Singh and Mr. Mohd.
Anis Ur Rehman, Advocates.

versus

G.P. TEWARI AND ANR.

.....Defendants

Through: Mr. Sunil Dutt Dixit, Mr. Shashwat
and Ms. Gauri, Advocates for LR of
D-1.
Mr. Sanjeev Mahajan, Advocate for
D-2.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present suit has been filed seeking following reliefs in respect of the estate of Late Shri Jagan Nath Prasad Tewari (J.P. Tewari), who was the grandfather of the plaintiff and father of the defendants:

“a) Pass a decree with Costs in favour plaintiff and against. the defendants directing them to render a true and faithful account of all the amounts received by them by selling or otherwise disposing of properties left by Late Shri Jagan Nath Prasad Tewari and pay him his 1/4th share out of that:

b) Pass a decree of partition by metes and bounds of the property plot No. 325 at Deepali, Peetampura, Delhi and give the plaintiff his 1/4th demarcated share thereof.

AND

c) Grant such other and further relief that the plaintiff may be found to be entitled to.”



BACKGROUND OF LITIGATION

2. Originally, the present suit was filed by the plaintiff before this Court in 1992, being Suit No.2063/1992. By order dated 27th April 1993, the said suit was transferred to the District Court, where it was re-numbered as Suit No.174/1993. The issues were framed in the suit and evidence was also recorded before the District Court.
3. The suit was initially filed while the plaintiff was a minor, through his natural guardian, *i.e.* Dr. Asha Tewari, being the plaintiff's mother. During the pendency of the proceedings before the Tis Hazari Court, the plaintiff filed an application under Order 32 Rule 10 of the Civil Procedure Code, 1908 (hereinafter 'CPC') after attaining the age of majority, seeking permission to discharge his mother and to pursue the suit in his own name. The said application was allowed by an order dated 18th May 2001.
4. Originally the suit was valued at Rs. 2,50,000/- and the plaintiff prayed for 1/4th share in the suit properties.
5. The plaint was amended in February 2003, and the suit was valued at Rs. 10,00,000/-.
6. *Vide* order dated 21st April 2003, the application under Order VII Rule 10 of CPC was allowed by the Trial Court and the plaint was returned for lack of pecuniary jurisdiction.
7. Thereafter, the present suit was filed before this Court, which was numbered as CS (OS) No.1558/2003.
8. In July 2003, the plaint was again amended to value the suit at Rs. 20,05,000/-.
9. *Vide* order dated 16th April 2007, in view of the statement made by



counsel for the parties, it was directed that the pleadings as well as evidence recorded in the Tis Hazari Court may be transferred to this Court and thus, the matter be treated as a case of transfer under Section 24 of CPC. Liberty was also granted to both parties to lead additional evidence.

CASE SETUP IN THE PLAINT

10. In the original plaint, it was pleaded as under:
 - 10.1. The parties to the present suit are related to each other through their common ancestor, Shri. J.P. Tewari.
 - 10.2. Shri. J.P. Tewari expired on 2nd March 1980 and was survived by his widow, Smt. Rani Tewari (erstwhile defendant no.3), and three (3) sons, namely Shri. Gyanender Prasad Tewari (defendant no.1), Late Dr. Dhirender Prasad Tewari (father of the plaintiff), and Shri. Subhash Tewari (defendant no.2). The plaintiff is the grandson of Shri J.P. Tewari and son of Late Dr. Dhirender Prasad Tewari.
 - 10.3. Late Shri J.P. Tewari belonged to a property-owning Zamindar family from *Mainpuri, Uttar Pradesh*, and owned substantial ancestral properties in the village. It is stated that he sold a substantial portion of the said ancestral properties and from the funds received upon such sale, Shri J.P. Tewari purchased and acquired the following immovable properties:
 - a. Two plots of land bearing No.206 and 207 at Shalimar Garden Extension in District Ghaziabad, U.P.
 - b. Plot No. 25-B in Dayal Bagh Colony situated at Mathura Road near Faridabad in Haryana.
 - c. Plot No. 868 admeasuring 500 sq. yds. in Shalimar Garden Extension



d. Allotted plot bearing No. 325 admeasuring 360sq. yds. by virtue of membership No. 1072 of UP Samaj Coop. House building Society ltd. Deepali, Pitampura, Delhi-110034. (hereinafter 'Pitampura property')

- 10.4. The aforementioned properties (hereinafter collectively referred to as 'suit properties') were bought by Late Shri J.P. Tewari out of the funds received by him from the sale of ancestral properties, and hence they belonged to the Joint Hindu Family comprising the plaintiff, defendants and the plaintiff's father.
- 10.5. After the death of Late Shri J.P. Tewari, the defendants assumed control of the suit properties and sold substantial portions thereof, thereby depriving the plaintiff of his lawful share.
- 10.6. The defendants neither rendered accounts of the funds received from sale of the suit properties nor paid the plaintiff his share of the sale proceeds.
- 10.7. The plaintiff is entitled to an equal share along with the defendants and his share in the joint family properties was to the extent of one-fourth (1/4th).
- 10.8. Even if the properties are assumed not to be joint family properties, the estate of Late Shri J.P. Tewari would still devolve equally upon his widow and three (3) sons, entitling the plaintiff, through his father, to a one-fourth (1/4th) share.
- 10.9. The plaintiff does not wish to continue holding the properties jointly with the defendants and repeated requests were made, through his mother and natural guardian, for partition and payment of his share. However, the defendants failed to comply, compelling the plaintiff to



institute the present suit.

10.10. Late Shri J.P. Tewari had not made the complete payment in respect of the Pitampura property allotted by the U.P. Samaj Cooperative House Building Society (hereinafter 'Society') during his lifetime and after his death, several payments were made by the plaintiff's father towards the acquisition of the said property, including a payment of Rs.2,000/- to the said Society.

10.11. During his lifetime, Late Shri J.P. Tewari nominated his widow, Smt. Rani Tewari (erstwhile defendant no.3), with the U.P. Samaj Cooperative House Building Society Ltd., and after his death, her name was brought on record by the Society. The said nomination did not affect the nature of the property, which continued to remain joint family property, in which the plaintiff claims a right by inheritance.

CASE SET UP BY THE DEFENDANTS

11. Initially, a common written statement was filed by the defendants no.1, 2 and 3, denying the averments made in the plaint and the existence of any joint family property. The following averments were made in the written statement:

11.1. The suit suffers from misjoinder and non-joinder of necessary parties, as no such purchaser or any person to whom the suit properties have been sold by the defendants has been made a party to the present suit.

11.2. The suit has not been properly valued for the purposes of the court fee. The plaintiff was not in any manner in possession of the property in respect of which the relief is claimed, and therefore, the suit should be valued for the purposes of court fees according to the valuation of the suit property and the *ad valorem* court fee should have been paid by the



plaintiff as per the provision of the Court Fees Act.

- 11.3. Late Shri J.P. Tiwari, during his lifetime, executed a Will dated 13th February 1980, duly registered with the Sub-Registrar, Delhi, on 26th February 1980, which is the last Will of the deceased and bears the thumb impression as well as the signatures of the testator. The aforesaid Will was executed at *Jessa Ram Hospital, Karol Bagh* in the presence of the Registrar, who was present there on the request of Shri J.P. Tewari. The plaintiff has filed the present suit in ignorance of the said Will.
- 11.4. The plaintiff has falsely described the suit properties as Joint Hindu Family properties. According to the defendants, Late Shri J.P. Tewari never constituted a Joint Hindu Family with his sons in respect of the suit properties and there never existed any joint family nucleus.
- 11.5. The plaintiff cannot ask for any share in any property, as his share in ancestral land has already been given to him, which he has disposed of.
- 11.6. All the properties standing in the name of Late Shri J.P. Tewari were his self-acquired properties, acquired from his own income and savings and not from any ancestral or joint family funds, as alleged by the plaintiff.
- 11.7. The plaintiff has failed to disclose any particulars of the alleged ancestral properties or sale transactions. The defendants have further denied the plaintiff's assertion that any contribution was made by the plaintiff's father towards the acquisition of the suit properties.
- 11.8. The plaintiff's father, Late Dr. Dhirender Prasad Tewari, did not acquire any interest in the suit properties during the lifetime of Late Shri J.P. Tewari, and therefore, the plaintiff cannot claim any right by



birth or otherwise.

11.9. The defendants were competent to deal with the suit properties in question and no fiduciary or legal obligation exists to account to the plaintiff.

AMENDMENT OF PLAINT IN 2014

12. The grandmother of the plaintiff, Smt. Rani Tiwari (erstwhile defendant no.3) expired on 13th August 2000, during the pendency of the present suit. In 2014, the plaintiff filed an application, being I.A. 4755/2014, under Order VI Rule 17 of CPC, seeking amendment of the plaint, for the third time, and thereby seeking a 1/3rd share in respect of the Pitampura property. The said application was allowed *vide* order dated 5th May 2015. The plaint was amended to value the suit at Rs. 3,20,26,400/- with the plaintiff claiming a 1/3rd share in the Pitampura property.

13. The defendants no.1 and 2 filed separate written statements to the amended plaint in 2015, wherein the following additional pleadings were made:

13.1. Smt. Rani Tiwari, *i.e.* the erstwhile defendant no.3, had executed a Relinquishment Deed dated 11th December 1989 regarding the Pitampura property in favour of the defendants no.1 and 2. The said Relinquishment Deed was submitted before the Society, after which a resolution was passed by the Managing Committee of the said Society for the transfer of the Membership of Late Shri J.P. Tiwari in the names of his sons, *i.e.* defendants no.1 and 2 under the Society's Bye-Laws. A letter dated 5th February 1990 bearing No. 1072/UPS/1990 for the purpose of approval of the sub-lease in the names of the defendants no.1 and 2 in respect of the Pitampura property was sent by the said Society



to the Delhi Development Authority (hereinafter 'DDA').

- 13.2. The alleged payment of Rs.2,000/- to the Cooperative Society is denied and, in any case, does not create any right, title, or interest in favour of the plaintiff or his father.
14. In the replication, the following averments have been made:
 - 14.1. The Will dated 13th February 1980, executed by Shri J.P. Tiwari, in favour of the defendants no.1 and 2, was invalid as the same was forged and fabricated. The said Will is shrouded in suspicious circumstances.
 - 14.2. The plaintiff also denied the existence of the Relinquishment Deed dated 11th February 1989, stating that the defendant no.3 could not read, write or understand English, in which language the document is written. The document allegedly conceals the names of all the legal heirs of the Late Shri J.P. Tiwari, including Dr. Dhirender Prasad Tiwari, who was the son of Shri J.P. Tiwari and father of the plaintiff.
 - 14.3. The defendants no.1 and 2 had executed two registered Indemnity Bonds dated 14th December 1989 as submitted by them to the Society, whereby they expressly confirmed that Late Shri J.P. Tewari had died intestate and had not executed any Will. Smt. Rani Tewari (erstwhile defendant no.3) had also purportedly submitted a letter and affidavit dated 26th November 1985 to the Society confirming the intestate death of Shri J.P. Tewari. The aforesaid documents were not disclosed or filed by the defendants in their written statement dated 12th October 1992 or amended written statements of July 2015. The said documents nullify the purported forged Will dated 13th February 1980 of Late Shri J.P. Tewari.
 - 14.4. The defendant no.2 had produced before the Society another fabricated



Will dated 26th February 1980 (in Urdu script) of Late Shri J.P. Tewari wherein Pitampura property was bequeathed only in favour of the defendant no.2 and his wife. The defendant no.2 and his wife have also filed a suit for permanent injunction against the Society before the Civil Court in this respect. Therefore, there is a falsity of the stand of the defendants regarding the first Will dated 13th February 1980.

ISSUES

15. The following issues were framed by the District Court on 20th October 1994:

- “1. Whether the suit has been properly valued for the purpose of court fees and jurisdiction*
- 2. Whether the suit is bad for non-joinder of parties*
- 3. Whether the plaintiff is entitled to a decree of rendition of accounts from the defendant*
- 4. Whether the plaintiff is entitled to a decree for partition of 1/4th share in the property no.325, Deepali, Pitampura, Delhi.*
- 5. Relief”*

16. Subsequently, *vide* order dated 26th July 2016, issue no.4 was amended so as to provide the modified share of the plaintiff as 1/3rd instead of 1/4th share.

17. The following additional issues no. 4(a) and 4(b) have been framed on 26th September 2022:

4(a) Whether late 'Sh. Jagahnath- Prasad Tewari had duly executed registered last and valid till dated 13th February 2018 as alleged, if so) its affects? ~OPD 1 and 2

4(b) Whether late Smt Rani Tewari had duly executed and



registered a relinquishment deed dated 11.12.1989 as alleged, if so, its affects?

~OPD 1 and 2

18. On 27th July 2016, this Court appointed a Court Commissioner for the recording of the remaining evidence.

19. Evidence in the suit has been recorded in different stages, *i.e.* before the ADJ at Tis Hazari Court, before the Joint Registrar of this Court and subsequently also through a Court Commissioner appointed by this Court.

20. During the course of the trial, fourteen (14) witnesses were examined on behalf of the plaintiff and ten (10) witnesses were examined on behalf of the defendants. The defendant no.2 was examined as DW-2. However, since DW-2 did not offer himself for cross-examination, his evidence has been disregarded.

21. The evidence before this Court was concluded on 30th November 2022.

22. Now I proceed to give my issue-wise findings:

ISSUE NO.1: Whether the suit has been properly valued for purposes of court fees and jurisdiction?

23. The onus to prove this issue is on the defendants.

24. It is the defendants' case that the plaintiff was not in possession of the property in respect of which the relief of partition is claimed. Therefore, the suit should be valued according to the valuation of the suit property and the *ad valorem* court fee should have been affixed. Accordingly, the present suit is liable to be dismissed.

25. It is submitted on behalf of the plaintiff that the plaintiff is not in a position to give exact amounts due to him as his share out of the sale proceeds of the other Joint Hindu Family Properties (Agricultural Land as well as suit



properties), already sold by the defendants. A tentative valuation of Rs. 200/- has been done and court fee of Rs. 20/- has been paid along with an undertaking to pay the additional court fee as assessed.

26. It is further submitted that the defendants have raised a vague objection regarding the valuation of the suit without giving any material particulars. The defendants have not given any evidence as to their correct valuation of the suit property. The defendants have also not disclosed the amount of the sale proceeds of the Joint Hindu Family properties/plots already sold by them, so that an appropriate court fee valuation regarding relief of rendition of accounts could be done. No evidence has been given by the defendants on the said issue to contradict the plaintiffs' averments and evidence.

ANALYSIS and FINDINGS

27. The plaintiff has valued the suit (amended plaint) for the purposes of court fees and jurisdiction on the basis of the valuation of the Pitampura property as per the applicable circle rates at Rs.3,20,26,400/-. Since the plaintiff has claimed 1/3rd share of the Pitampura property, the same would be Rs.1,06,75,466/-. The plaintiff has paid *ad valorem* court fees of Rs.1,06,600/- on the said amount.

28. As regards the relief of rendition of accounts, since the plaintiff is not in a position to provide details of the amounts that would be due to him out of his share of the sale proceeds of other properties sold by the defendants, he has tentatively valued the same at Rs.200 and paid court fees on the same. The defendant has undertaken to pay the additional court fees that may be assessed after the rendition of accounts.

29. Hence, the said issue is decided in favour of the plaintiff and against the defendants.



ISSUE NO. 2: Whether the suit is bad for non joinder of parties?

30. The onus to prove this issue is on the defendants.

31. It is the defendants' case that the purchasers of the already sold Joint Hindu Family Property have not been made parties in the suit. Since the plaintiff has alleged that large parts of the properties, left by Shri J.P. Tewari, have been unauthorisedly sold by the defendants, the plaintiff should have impleaded the purchasers of such properties as parties to the present suit.

32. It is submitted on behalf of the plaintiff that in the absence of any such material particulars/evidence regarding the sold properties, the suit cannot be held bad for non-joinder of parties. The onus is on the defendants to disclose the names of the purchasers and details of the sale documents, who have failed to do so.

33. It is further submitted that the relief of rendition of accounts is sought against the defendants and there is no relief sought regarding the cancellation of sale transfer documents to third parties.

ANALYSIS AND FINDINGS

34. Since the relief of rendition of account is sought against the defendants and no relief with regard to cancellation of sale/transfer documents executed in favour of third parties has been claimed by the plaintiff in the present suit, the purchasers/third parties are not necessary parties.

35. Accordingly, the said issue is decided in favour of the plaintiff and against the defendants.

ISSUE NO. 3 Whether the plaintiff is entitled to a decree for rendition of accounts from the defendant?

36. The onus to prove this issue is on the plaintiff.

37. As per the plaintiff, there were Joint Hindu Family properties



comprising agricultural lands in *Mainpuri, U.P.* Thereafter, the following properties, *i.e.* (i) *Two plots of land bearing No.206 and 207 at Shalimar Garden Extension in District Ghaziabad, U.P.* (ii) *Plot No. 25-B in Dayal Bagh Colony situated at Mathura Road near Faridabad in Haryana* (iii) *Plot No. 868 admeasuring 500 sq. yds. in Shalimar Garden Extension* (iv) *Allotted plot bearing No. 325 admeasuring 360sq. yds. By virtue of membership No. 1072 of UP Samaj Coop. House building Society ltd. Deepali, Pitampura, Delhi- 110034,* were purchased by Late Shri J.P. Tewari in and around Delhi out of the funds received by him from the sale of agricultural lands/Joint Hindu Family properties at *Mainpuri, U.P.* The suit properties would also amount to Joint Hindu Family properties. After the death of Shri J.P. Tewari, the defendants have unilaterally sold the said suit properties.

38. It is further submitted that the defendants have failed to aver in the written statements or prove that the joint family ever came to an end either by partition/division or by any other overt act of the parties/members of the joint family or their successors. Thus, the legal status of the Joint Hindu Family has continued to exist as such and all the properties acquired by Shri J.P. Tewari, *i.e.* the suit properties, retain the status and character of the Joint Hindu Family properties.

39. The defendants have denied the existence of any Joint Hindu Family properties in paragraph 4 of the written statements. There are no averments in the plaint or any evidence led as to when the HUF was created, whether the same existed prior to 1956 or it was created after 1956 by throwing the properties into a common hotchpotch.

ANALYSIS AND FINDINGS

40. With regard to the existence of a Joint Hindu Family, a reference may



be made to the judgment of a Coordinate Bench of this Court in *Sunny (Minor) v. Sh. Raj Singh*¹, the relevant paragraphs of which are set out below:

“7(i). As per the ratio of the Supreme Court in the case of Yudhishter (supra) after passing of the Hindu Succession Act, 1956 the position which traditionally existed with respect to an automatic right of a person in properties inherited by his paternal predecessors-in-interest from the latter’s paternal ancestors upto three degrees above, has come to an end. Under the traditional Hindu Law whenever a male ancestor inherited any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him had a right in that property equal to that of the person who inherited the same. Putting it in other words when a person ‘A’ inherited property from his father or grandfather or great grandfather then the property in his hand was not to be treated as a self-acquired property but was to be treated as an HUF property in which his son, grandson and great grandson had a right equal to ‘A’. After passing of the Hindu Succession Act, 1956, this position has undergone a change and if a person after 1956 inherits a property from his paternal ancestors, the said property is not an HUF property in his hands and the property is to be taken as a self-acquired property of the person who inherits the same. There are two exceptions to a property inherited by such a person being and remaining self-acquired in his hands, and which will be either an HUF and its properties was existing even prior to the passing of the Hindu Succession Act, 1956 and which Hindu Undivided Family continued even after passing of the Hindu Succession Act, 1956, and in which case since HUF existed and continued before and after 1956, the property inherited by a member of an HUF even after 1956 would be HUF property in his hands to which his paternal successors-in-interest upto the three degrees would have a right. The second exception to the property in the hands of a person being not self-acquired property but an HUF property is if after 1956 a person who owns a self-acquired property throws the self-acquired property into a common hotchpotch whereby such property or properties thrown into a common hotchpotch become Joint Hindu Family properties/HUF properties. In order to claim the properties in this second exception position as being HUF/Joint Hindu Family properties/properties, a plaintiff has to establish to the satisfaction of the court that when (i.e date and year) was a particular property or properties thrown in common hotchpotch and hence HUF/Joint Hindu Family created.

9. Onus of important issues such as issue nos. 1 and 2 cannot be

¹ 2015 SCC OnLine Del 13446.



*discharged by oral self-serving averments in deposition, once the case of the plaintiffs is denied by the defendants, and who have also filed affidavit of DW1 Sh. Ram Kumar/defendant No. 2 in the amended memo of parties for denying the case of the plaintiffs. **An HUF, as already stated above, could only have been created by showing creation of HUF after 1956 by throwing property/properties in common hotchpotch or existing prior to 1956, and once there is no pleading or evidence on these aspects, it cannot be held that any HUF existed or was created either by Sh. Tek Chand or Sh. Gagan Singh. In my opinion, therefore, plaintiffs have miserably failed to discharge the onus of proof which was upon them that there existed an HUF and its properties, and the plaintiffs much less have proved on record that all/any properties as mentioned in para 15 of the plaint are/were HUF properties.***

[emphasis supplied]

41. The judgment in ***Sunny (Minor)*** (supra) was followed in ***Surender Kumar Khurana v. Tilak Raj Khurana & Ors***².

42. In ***Surender Kumar Khurana*** (supra), the suit was rejected and it was held that clear pleadings need to be made in the plaint with regard to existence and creation of an HUF, including its date of creation, its *Karta* and coparceners and in the event the HUF was created after 1956, when the property claimed to be an HUF property was put in a common hotchpotch. The observations of the Court in ***Surender Kumar Khurana*** (supra) are set out below:

“7. On the legal position which emerges pre 1956 i.e before passing of the Hindu Succession Act, 1956 and post 1956 i.e after passing of the Hindu Succession Act, 1956, the same has been considered by me recently in the judgment in the case of Sunny (Minor) v. Sh. Raj Singh, CS (OS) No. 431/2006 decided on 17.11.2015. In this judgment, I have referred to and relied upon the ratio of the judgment of the Supreme Court in the case of Yudhishter (supra) and have essentially arrived at the following conclusions : -

- (i) ***If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person, inheritance of an immovable property of such a person by his successors-***

² 2016 (155) DRJ 71



in-interest is no doubt inheritance of an 'ancestral' property but the inheritance is as a self-acquired property in the hands of the successor and not as an HUF property although the successor(s) indeed inherits 'ancestral' property i.e a property belonging to his paternal ancestor.

- (ii) *The only way in which a Hindu Undivided Family/joint Hindu family can come into existence after 1956 (and when a joint Hindu family did not exist prior to 1956) is if an individual's property is thrown into a common hotchpotch. Also, once a property is thrown into a common hotchpotch, it is necessary that the exact details of the specific date/month/year etc. of creation of an HUF for the first time by throwing a property into a common hotchpotch have to be clearly pleaded and mentioned and which requirement is a legal requirement because of Order VI Rule 4 CPC which provides that all necessary factual details of the cause of action must be clearly stated. Thus, if an HUF property exists because of its such creation by throwing of self-acquired property by a person in the common hotchpotch, consequently there is entitlement in coparceners etc. to a share in such HUF property.***
- (iii) *An HUF can also exist if paternal ancestral properties are inherited prior to 1956, and such status of parties qua the properties has continued after 1956 with respect to properties inherited prior to 1956 from paternal ancestors. Once that status and position continues even after 1956; of the HUF and of its properties existing; a coparcener etc. will have a right to seek partition of the properties.***
- (iv) *Even before 1956, an HUF can come into existence even without inheritance of ancestral property from paternal ancestors, as HUF could have been created prior to 1956 by throwing of individual property into a common hotchpotch. If such an HUF continues even after 1956, then in such a case a coparcener etc. of an HUF was entitled to partition of the HUF property."***

[emphasis supplied]

43. The legal position emerging from the abovementioned judgments is that the plaint has to contain positive averments and a reference to proper documentation with regard to the creation and existence of an HUF. In the event the HUF is stated to have existed prior to 1956, it has to be averred that the said HUF continued and in the event the HUF came into existence after 1956, the details with regard to the creation of the HUF, including the date it



was created, have to be pleaded.

44. Except for making bald averments in the plaint that the suit properties are Joint Hindu Family properties, purchased out of the sale proceeds of the ancestral properties, no details have been given as to the following aspects:-

- i. Whether an HUF and its properties were in existence prior to 1956 or not.
- ii. If yes, whether the said HUF continued after 1956 or not.
- iii. Whether an HUF was created after 1956 and in what manner.
- iv. Whether the aforesaid ancestral properties were put into the common hotchpotch.

45. The plaintiff has also failed to prove that there was a valid existing HUF before 1956 or that an HUF was created after 1956. The plaintiff has also failed to prove that the suit properties, which are the subject matter of the plaint, were Joint Hindu Family properties or were purchased from the sale of joint family properties. The onus was on the plaintiff to prove that there was an existing HUF and the aforesaid properties were a part of the HUF. The plaintiff has failed to discharge the onus. Therefore, it cannot be said that the suit properties belonged to an HUF.

46. It is the plaintiff's case that Sh. J.P. Tewari sold ancestral lands in the village to purchase the suit properties in Delhi. It is submitted on behalf of the plaintiff that there is no evidence given by the defendants to show the total amount spent by Shri J.P. Tewari on the purchase/acquisition of the aforesaid suit properties, as well as the part payment of the membership in the Pitampura property. Further, the defendants have not led any evidence as regards the personal income and savings of Late Shri` J.P. Tewari. The defendants have not proved the total agricultural income/sale proceeds of the



village agricultural lands. The defendants have not led any evidence with respect to the sale of the suit properties.

47. PW-1, Sh. Har Bhagwan Mehta, who is a colleague of Sh. J.P. Tewari, in his statement, has deposed that Sh. J.P. Tewari had some agricultural land in his ancestral village.

48. PW-2, Mrs. Asha Tewari, mother of the plaintiff, in her evidence, has deposed that her husband expired on 10th May 1983, leaving behind his wife (PW-2) and son Mr. Ashish Tewari (plaintiff). In her evidence recorded on 18th September 1995, PW-1 has stated that her father-in-law, Sh. J.P. Tewari owned and looked after the ancestral property at *Madhpuri, District Mainpuri, U.P.*, which consisted of agricultural land and houses. She has further stated that the suit properties were purchased by Sh. J.P. Tewari out of the sale proceeds of his ancestral property. After his death, the defendants no.1 and 2 started selling properties left behind by Sh. J.P. Tewari. PW-2 has also stated that during the lifetime of her husband, 1/3rd share of the sale proceeds of some lands in the village, was given to them.

49. In her cross-examination, PW-2 admits that she had sold some land at village *Madhpuri, District Mainpuri, Uttar Pradesh* to Smt. Nirmala Devi.

50. In his cross-examination, PW-13, *i.e.* the plaintiff, has stated that the ancestral properties referred to by him are the properties owned by his grandfather in the village and the other property, being the Pitampura property. He has stated that he cannot give the particulars of the properties owned by his grandfather, *i.e.* Sh. J.P. Tewari. He has admitted that her mother had sold some of the properties in the village.

51. PW-3, Sh. Satish Kumar, who is the plaintiff's maternal uncle, in his statement, has deposed that Sh. J.P. Tewari had told him that he was selling



village property and wanted to purchase property in Delhi.

52. In his cross-examination, PW-3 has stated that Sh. J.P. Tewari had told him that he purchased some plots of land in Delhi from the sale proceeds of the village land but he did not give the description of the said property.

53. The plaintiff has admitted that he was given share in the ancestral property/land at *Mainpuri, U.P.* It has also come in evidence that some property was sold by the plaintiff's mother (Ref. cross examination of Dr. Asha Tewari, PW-2 on 19th September, 1995 and the cross examination of the plaintiff, PW-13 on 17th March, 2017).

54. What has come on record is that one of the village properties belonging to Sh. J.P. Tewari was sold by Sh. J.P. Tewari and the sale proceeds were distributed among three (3) of his sons. This fact has been confirmed by the plaintiff (PW-13) as well as his mother (PW-2) in their evidence. In her cross-examination, PW-2 has also admitted that she has sold some land in village *Mainpuri, U.P.*, which came to the share of her husband.

55. Upon a careful analysis of the evidence led in the suit, it becomes clear that no evidence has been led on behalf of the plaintiff with regard to details and particulars of the ancestral properties that were allegedly sold by Sh. J.P. Tewari. There is no evidence to show the suit properties were purchased by Sh. J.P. Tewari from the sale proceeds of the ancestral lands in the village. Therefore, in the absence of any evidence to the contrary, it would have to be taken that the suit properties were the self-acquired properties of Sh. J.P. Tewari.

56. As regards the sale of the suit properties, it is not disputed by the defendants that the property, *i.e. Two plots of land bearing No.206 and 207 at Shalimar Garden Extension in District Ghaziabad, U.P.*, which were



bequeathed upon them by the Will of Sh. J.P. Tewari have been sold by them. 57. The defendants have denied that they have sold *Plot No. 868 admeasuring 500 sq. yds. in Shalimar Garden Extension*. The plaintiff has not led any evidence to show that the said property has been sold by the defendants. Since the said property does not find any mention in the Will, it is possible that the said property was sold by Sh. J.P. Tewari during his lifetime.

58. The defendants have categorically denied that the property at *Plot No. 25-B in Dayal Bagh Colony situated at Mathura Road near Faridabad in Haryana*, which was bequeathed in favour of the plaintiff's father, was sold by them. No evidence has been led on behalf of the plaintiff to show that the aforesaid property has been sold by the defendants.

59. In terms of Sections 101 and 102 of the Indian Evidence Act, 1872 (hereinafter 'Evidence Act'), the burden of proof lies on the party who asserts the existence of a fact and seeks relief on that basis. The initial onus, therefore, was on the plaintiff to establish his entitlement to rendition of accounts by placing on record cogent evidence in support of his claim that the suit properties were purchased by Sh. J.P. Tewari from the sale of ancestral lands in the village which he has failed to discharge. It is only upon discharge of such initial burden that the onus would shift to the defendants to rebut the same. Consequently, the burden never shifted upon the defendants. It was not for the defendants to prove that the suit properties were purchased from the personal income and savings of Sh. J.P. Tewari. Reference in this regard may be to the judgment of the Supreme Court in *Anil Rishi v. Gurbaksh Singh*³.

³ (2006) 5 SCC 558.



60. In the present case, the plaintiff has failed to adduce any evidence whatsoever in support of his claim for rendition of accounts. However, this finding would be subject to findings with respect to issue no.4(a), which is with regard to the validity of the Will of Sh. J.P. Tewari.

61. In view of the discussion above, this issue is decided in favour of the defendants and against the plaintiff.

ISSUE NO.4(a): Whether Late Shri Jagannath Prasad Tewari had duly executed a registered last and valid Will dated 13.02.2018 (13.02.1980-correct date) as alleged, if so its effect? **OPD-1 & 2**

62. The onus to prove this issue is on the defendants, being the propounders of the Will dated 13th February 1980 (hereinafter 'Will') executed by Sh. J.P. Tewari (hereinafter 'testator').

63. The factum of execution of the Will has been affirmed by DW-1, Late Smt. Rani Tewari, in her deposition on 19th September 1995. She has stated that her husband, Sh. J.P. Tewari had executed a Will in her presence in the hospital 5 to 7 days before his death.

64. She was duly cross-examined by the plaintiff in this regard. In her cross-examination, DW-1 has confirmed that the persons who signed the Will are no longer alive. She has also stated that her entire family, including the plaintiff's father were present at that time. She has identified the signatures of her husband on the certified copy of the Will (Mark 'DA'). She further confirmed that the Sub-Registrar had come to the hospital along with an Advocate for registration of the Will.

65. The defendant no.1 also deposed as a witness (DW-9). In his statement,



DW-9 has confirmed the execution of the aforesaid Will by his father at the *Jassa Ram Hospital* in the presence of Sh. Dharendra Prasad Tewari (plaintiff's father), Sh. Arjun Sharma, Mrs. Krishna Palliwal, Sh. Ramji Lal, Mr D.K. Sharma, Sh. Gyanendra Prasad Tewari (defendant no.1), the Sub-Registrar and Smt. Rani Tewari (erstwhile defendant no.3). DW-9 has identified the signatures of the testator at point 'A' on all three pages of the Will. He has further identified the thumb impression of the testator, which was taken by the Sub-Registrar at point 'B'. He has further stated that the Will was read over by the Sub-Registrar to the testator after which the testator signed the Will and put his thumb impression. It is stated that the attesting witnesses, Sh. Arjun Sharma and Sh. D.K. Sharma signed on the said Will at points 'C' and 'D'.

66. In his cross-examination, DW-9 had stated that Sh. J.P. Tewari had himself dictated his Will to a typist and thereafter had gone through the Will. DW-9 has denied that his father was suffering from paralysis. Further, he has also deposed that the original of the said Will was lost by his brother, Sh. Subhash Tewari, in respect of which a police complaint was lodged at P.S. Parliament Street (Mark 'X').

67. DW-5, Ms. Krishna Paliwal, who is a family friend of the parties, has also stated in her evidence that Shri J.P. Tewari made a Will in her presence on 25th February 1980, at *Jassa Ram Hospital*. She has stated that she had gone to the hospital to inquire about his health and the family members of Shri J.P. Tewari were present, as were Mr. Devender Sharma and Mr. Arjun Sharma, who signed the Will as attesting witnesses.

68. In her cross-examination, DW-5 has stated that the testator was not able to move, however he was able to speak, read and write. It is stated that the



thumb impression on the said Will was put in the presence of DW-5.

69. In order to prove the Will, the defendants have summoned an official from the office of the Sub-Registrar, Asaf Ali Road, *i.e.* DW-4. DW-4 brought the office copy of the Will registered with the Sub-Registrar, which was compared with the certified copy of the Will filed by the defendants (Mark 'DA'). Thereupon, the certified copy of the Will was exhibited as Exhibit DW-4/1.

70. DW-3, being an official from the Indian Meteorological Department, Lodhi Road, New Delhi, *i.e.* where Sh. J.P. Tewari worked, brought the service book as well as other papers (Ex.DW-3/1-Ex.DW-3/6) bearing the thumb impression as well as the signatures of the testator, which were taken at the time of his initial appointment in the Indian Meteorological Department.

71. The handwriting expert, Sh. R.P. Singh, was examined as DW-7. In his report, DW-7 has clearly stated that the signatures on the Will are those of testator, after comparing the signatures and thumb impression of the testator on his Will with his signatures and thumb impression that were produced by DW-3 from the service book and other documents (Ex. DW-3/1- Ex. DW-3/7). DW-7 has proved his report, being Exhibit DW-7/1, along with Exhibits DW-7/2 to DW-7/21, being the documents in support of his report. The said witness was duly cross-examined and has withstood the test of cross-examination.

72. I have carefully analysed the aforesaid evidence led on behalf of the defendants. In my view, sufficient evidence has been produced on behalf of the defendants to show that the subject Will was validly executed by the testator. There is no material contradiction in the testimony of the aforesaid witnesses produced on behalf of the defendants.



73. Now I shall deal with the objections raised on behalf of the plaintiff.

74. PW-2 in her statement has deposed that her father-in-law, *i.e.* Sh. J.P. Tewari died *intestate* on 2nd March 1980. She has deposed that Sh. J.P. Tewari had never executed any Will in his lifetime and the Will produced by the defendants does not bear his signatures and therefore is a false document. However, no evidence was produced on behalf of the plaintiff to dispute the signatures of Shri J.P. Tewari on the Will. On the other hand, the defendants have produced evidence to prove the signatures of the testator on the Will.

75. In her cross-examination, PW-2 admits that she had filed an earlier civil suit for permanent injunction and in that suit, she came to know about the alleged Will left behind by Sh. J.P. Tewari. Yet no reference to the Will was made by the plaintiff in the present suit.

76. The next objection raised was that Sh. J.P. Tewari was not in a sound state of mind at the time of execution of the Will. However, there is no pleading on behalf of the plaintiff with regard to Shri J.P. Tewari not being of sound mind at the time of execution of the Will. In the written statement, the defendants have clearly stated that the testator was able to understand and speak, but could not write properly. The relevant extract from paragraph 1 of the written statement is set out below:

"1. ...Before the execution of this Will Shri J.P. Tiwari had been admitted in "Jessa Ram Hospital & Nursing Home " W.E.A. Karol Bagh, New Delhi - 5 with Ac. Renal failure and the certificate was issued by the doctors on 5.2.1980 to the effect that Shri J.P. Tiwari, so admitted was capable to understand and speak but he was unable to write properly, because of old age and disease. (Annexure - A). Another certificate was issued by the Doctor to certify that Shri J.P. Tiwari was unable to be physically present before the Registrar, in the court for Registration of the Will (Annexure-B). The aforesaid Will was executed at the Jessa Ram Hospital itself in the presence of the Registrar, who was present there on the request of the



deceased Sh. J.P. Tiwari.”...

77. In light of the aforesaid pleading, the onus was on the plaintiff to show that the testator was not in a sound state of mind at the time of execution of the said Will. While the plaintiff has averred in the replication that the Will is a forged and fabricated document, he has not questioned the mental condition of Shri J.P. Tewari at the time of execution of the Will. Hence, no issue was framed in this regard.

78. In this regard, reference may be made to the judgment of this Court in ***Budh Singh v. Raghbir Singh***⁴

“21. I am of the view that though the onus to prove the Will may be on the propounder thereof but a challenger to the Will is required to, in the pleadings, specifically plead the grounds on which a challenge is sought to be made to the Will so as to let the propounder of the Will know the grounds on which the Will is contested, to be in a position to lead evidence to dispel such grounds. A challenger to the Will cannot be allowed to, without taking any pleading or any specific grounds of challenge, spring surprises and at the stage of arguments contend that this has not been proved or that has not been proved.”

79. There is a presumption of genuineness with regard to a registered Will and the onus is on the person challenging the Will to establish that it was not executed validly or there were suspicious circumstances. [Please see ***Metpalli Lasum Bai v. Metapalli Muthaih***⁵, ***Vikram Chopra v. State***⁶ and ***Sanjay Kumar Jain v. State (NCT of Delhi)***⁷].

80. In the present case, since the Will was registered in the hospital, and the registration of the Will raises a presumption that the testator was in a sound

⁴ 2015 SCC OnLine Del 14528.

⁵ 2025 SCC OnLine SC 1488 ¶9.

⁶ 2025 SCC OnLine Del 8556 ¶46.

⁷ 2025 SCC OnLine Del 10026 ¶18.



state of mind and capable of knowing the consequences of what he was doing, there is an endorsement made by the Sub-Registrar at the back of the Will which reads as ‘At hospital, due to illness’. There is nothing to suggest that the testator was not in a sound state of mind to execute the Will.

81. No evidence has been led by the plaintiff to show that the testator was not in a sound state of mind or the physical capacity to sign at the relevant time. Merely because the testator was suffering from renal failure would not be the basis to say that the testator was not in a sound state of mind at the time of execution of the Will. The onus was on the plaintiff to show that he was suffering from an illness which made him incapable of executing the said Will.

82. Next it is contended by the plaintiff that the Will is not genuine or the last Will of the deceased as there was a later Will dated 26th February 1980 (in Urdu Script) which was propounded by the defendant no.2 and his wife in a suit for permanent injunction being Suit no.348/1989 titled as “***Subhash Tewari and Anr. v. UP Samaj CGHS and Ors.***” which was filed before the District Court.

83. It is a matter of record that the aforesaid alleged Will of 26th February 1980 was never adjudicated upon in the said suit, as the said suit was withdrawn. On the other hand, the Will propounded in the present suit has been proved by the defendants by leading evidence.

84. Insofar as the plaintiff’s contention that the defendants have not applied for the probate of the aforesaid Will despite several years having passed after the death of the testator, there is no mandatory requirement to obtain a Probate



in respect of a Will in Delhi. (Please see *Kanta Yadav v. Om Prakash Yadav*⁸)

85. As regards the plaintiff's contention that the original of the Will dated 13th February 1980, executed by Sh. J.P. Tewari has not been produced by the defendants, DW-9, in his evidence, had deposed that the original Will was lost and hence, a certified copy of the same was filed. In *Sahil Marwah & Anr. v. Vikas Malhotra & Ors.*⁹, relying on Section 237 of the Indian Succession Act, 1925, it has been held that certified copy of a Will is admissible in evidence. The certified copy of the Will filed by the defendants has been exhibited as Ex. DW 4/1 after summoning of the records of the Sub-Registrar. The duplicate copy registered with the Sub-Registrar is in effect a mirror copy of the original document and has the same effect in law as the original document in its operation.

86. Consequently, the certified copy of the Will carries the same evidentiary value and legal force as the original document, and any challenge to its validity must be substantiated by cogent and convincing evidence by the objector. The plaintiff has not led any evidence to challenge the validity of the certified copy of the Will. In such circumstances, the document cannot be disregarded merely on the ground that it is a certified copy.

87. Yet another objection of the plaintiff is that none of the three (3) attesting witnesses to the said Will, *i.e.* Shri D. K. Sharma, Shri Jagmohan Bhasin and Shri Arjun Sharma, have been examined. As regards Sh. Arjun Sharma, it has been stated that the said witness is not alive however, no death certificate has been filed. Thus, in the absence of the testimony of at least one (1) of the attesting witnesses as required under Section 63 of the Indian

⁸ (2020) 14 SCC 102 ¶ 11, 12.

⁹ 2024 SCC OnLine Del 3348.



Succession Act, 1925, along with Section 68 of the Evidence Act, the alleged Will has not been proved in accordance with law.

88. It is pertinent to note that although the Will bears the signatures of three (3) attesting witnesses, the endorsement made by the Sub-Registrar on the reverse of the Will records the names of only two (2) attesting witnesses, namely, Shri D.K. Sharma and Shri Arjun Sharma. Thus, for the purposes of statutory compliance, there are only two (2) attesting witnesses to the Will, *i.e.* Shri D.K. Sharma and Shri Arjun Sharma. Sh. Jagmohan Bhasin cannot be considered as an attesting witness.

89. In terms of Section 68 of the Evidence Act, at least one of the attesting witnesses to a Will has to appear in Court to give evidence. Section 69 of the Evidence Act provides that if no attesting witness can be found, the handwriting of the attesting witness on the Will has to be proved.

90. It has already come in the evidence of DW-1 (Smt. Rani Tewari) that none of the persons who signed the Will are alive. Sh. Anil Shukla, the son of Sh. Arjun Sharma, the attesting witness to the Will, appeared as a witness (DW-8). He has deposed that his father had expired in June 1992. DW-8 has duly identified the signatures of his father at point 'X' on the Will (Ex. DW-4/1). DW-8 was duly cross-examined by the plaintiff. There is no reason to disbelieve the aforesaid testimony, which remains unrebutted. Therefore, in my view, the requirements of Sections 68 and 69 of the Evidence Act stand satisfied.

91. It is the plaintiff's submission that both the defendants no.1 and 2, have executed two Indemnity Bonds dated 14th December 1989 (Ex. PW12/7 and PW 12/8), wherein they have stated that their father, Shri J.P. Tewari, died intestate on 2nd March 1980. The said Indemnity Bonds have been admitted



by the defendants no.1 and 2 during the admission/denial of documents. Further, the letter and affidavit dated 26th November 1985, executed by Smt. Rani Tewari (erstwhile defendant no.3) also states that there is no Will executed by Sh. J.P. Tewari.

92. It is the defendants' case that the said Indemnity Bonds were given by the defendants to the DDA/Society for the purposes of mutation of the Pitampura property. In the letter dated 9th February 1983 (Ex. PW-7/Q), which was sent by DDA to Smt. Rani Tewari (erstwhile defendant no.3), Smt. Rani Tewari was directed to furnish documents, including the Indemnity Bonds, for the purposes of mutation. In another letter dated 11th September 1985 (Ex. PW-7/O), sent by the Society, Smt. Rani Tewari was directed to furnish the 'No objection' from all the legal heirs on an affidavit in her favour to effect the mutation in her name. Therefore, the defendants had executed the Indemnity Bonds and the letter and affidavit to effect the transfer of the Pitampura property. Further, the said Indemnity Bonds were as per the formats provided by DDA and therefore, the defendants had affixed their signatures on the dotted lines of the said Bonds to effect the mutation. According to the defendants, such Indemnity Bonds are routinely obtained in mutation proceedings to complete the formalities for the transfer of property.

93. The explanation given by the defendants with respect to the letter/affidavit of Smt. Rani Tewari and the two Indemnity Bonds given by defendants no.1 and 2 appears to be plausible. The defendants executed the Indemnity Bonds as required by DDA. However, these documents cannot constitute an estoppel against the defendants from propounding a Will. At best, it can be said that the defendants gave wrong information to the Society. Merely on account of the said documents, it cannot be said that Sh. J.P. Tewari



did not execute a Will.

94. It is the plaintiff's case that the Will is unnatural and unreasonable as the testator has not bequeathed any portion of his estate in favour of his wife, Smt. Rani Tewari, nor has any reasonable explanation been given for her exclusion, which casts serious doubt on the genuineness/authenticity of the Will.

95. In terms of the aforesaid Will dated 13th February, 1980 (Ex.DW4/1), the properties owned by Shri J.P. Tewari were bequeathed in favour of two (2) of his sons. The relevant extracts from the said Will are set out below:

“NOW by virtue of this will, I hereby devise, bequeath and give my plots referred to above, as under:-

- a) Plots no. 206 and 207 measuring 200 sq. yards and 254 sq. yards situate in Shalimar Garden, EXTN. No. 1, Ghaziabad (U.P.) to my eldest son, Sh. Gyanendra Prasad Tiwari*
- b) Plot No. 25-B, measuring 325 sq. yards situate in the area of Dayalbagh Colony (near Badarpur) Mathura Road, Haryana, allocated by Delhi Housing Company, 2560, Chawri Bazar, Delhi to Sh. Dharendra Prasad Tiwari, my second son.*
- c) The plot to which I am entitled to be allocated by Uttar Pradesh Samaj Co-operative House Building Society Limited, 4-B, Pusa Road, New Delhi-05 shall be shared one-half equally by my two sons namely Sh. Gyanendra Prasad Tiwari, eldest son and Sh. Subash Kumar Tiwari, youngest son.”*

96. In terms of the aforesaid Will, the testator has bequeathed the property bearing *Plots no. 206 and 207 measuring 200 sq. yards and 254 sq. yards situate in Shalimar Garden, EXTN. No. 1, Ghaziabad (U.P.)* in favour of the defendant no.1. The testator has bequeathed the property bearing *Plot No.25B at Dayalbagh Colony* in favour of the plaintiff's father. The testator has bequeathed the Pitampura property in favour of two (2) of his sons, *i.e.* the defendants herein. Therefore, it appears that the testator has distributed his



properties among all three of his sons and has not excluded any of them.

97. A testator has complete freedom to dispose of his assets in the manner he wishes. The exclusion of the spouse of the testator and the execution of the Will for the benefit of his three (3) sons, by itself, is not a suspicious circumstance. Perhaps, the testator was of the view that his wife was being looked after by his sons and therefore there was no need to separately bequeath any property in her name.

98. After examining the entire evidence on record, no suspicious circumstances surrounding the Will have been made out by the plaintiff. The defendants, being the propounders of the Will, have been able to prove that the Will has been validly executed in accordance with law.

99. Accordingly, this issue is decided in favour of the defendants and against the plaintiff.

ISSUE NO.4(b): Whether Late Smt. Rani Tewari had duly executed and registered a Relinquishment Deed dated 11.12.1989 as alleged, if so its effect?

OPD-1 & 2.

100. In view of my findings with respect to issue no.4(a) upholding the validity of the Will, this issue is only of academic interest. The Relinquishment Deed would have relevance only if the Will is held to be invalid. Nevertheless, since a specific issue has been framed, this Court proceeds to adjudicate the same in terms of Order XIV Rule 2 of CPC.

101. The onus to prove this issue was on the defendants. In terms of the Relinquishment Deed dated 12th December 1989, Smt. Rani Tewari relinquished her share in the Pitampura property in favour of two of her sons, *i.e.* the defendants no.1 and 2 herein.

102. The defendants have relied on the evidence of D2W1, Sh. Krishan



Singh, who is one of the attesting witnesses to the Relinquishment Deed. D2W1 has deposed in his evidence by way of affidavit that he was requested by Smt. Rani Tiwari to sign the Relinquishment Deed as a witness. Accordingly, D2W1 reached the Sub-Registrar's Office at Kashmeri Gate on 11th December 1989, where Smt. Rani Tiwari, along with Sh. S.B. Verma, the other attesting witness to the Relinquishment Deed was also there. He has also deposed that they went to Sh. M. N. Sharma, Advocate, who took a printout of the relinquishment deed on a stamp paper and the contents of the Relinquishment Deed were read by the said Advocate in Hindi to Smt. Rani Tiwari in his presence. After satisfying herself with the contents of the Relinquishment Deed, Smt. Rani Tiwari put her signature on the Relinquishment Deed in the presence of D2W1 as well as the other witness, *i.e.* Sh. S.B. Verma, on both pages of the said Deed. The witness identified the signatures of Smt. Rani Tiwari on the said Deed at point 'A' and her right thumb impression at point 'B'.

103. D2W1 was duly cross-examined by the Advocate of the plaintiff. However, he could not shake the credibility of the deposition.

104. The defendants duly summoned the record keeper from the office of the Sub-Registrar, Kashmeri Gate, Delhi and examined him as DW-10. DW-10 brought the original relinquishment deed dated 11th December 1989, executed by Smt. Rani Tewari. He confirmed the registration of the said Relinquishment Deed. Accordingly, the registered Relinquishment Deed filed on behalf of the defendants was exhibited as Exhibit DW-10/A.

105. Once a document is registered and the process of registration is proved by examining the concerned official, a presumption arises that the document was validly executed. It is for the party disputing the document to lead



evidence to disprove the credibility of the registered document. I will now examine whether the plaintiff has been able to show that the Relinquishment Deed has not been validly executed.

106. It is the case of the plaintiff that the Relinquishment Deed executed by Smt. Rani Tewari is a fabricated and manipulated document as Smt. Rani Tewari could neither read, nor write, nor understand English. However, D2W1 in his evidence by way of affidavit has stated that the contents of the relinquishment deed were read by Sh. M.N. Sharma, Advocate in Hindi to Smt. Rani Tewari in his presence and it was only after her satisfaction that she put her signature on the Relinquishment Deed.

107. Next, it is contended on behalf of the plaintiff that the Relinquishment Deed bears the signature as 'Smt. Rani' even though in her deposition before this Court, she did not add 'Smt.' to her signature.

108. The fact that Smt. Rani Tewari was adding 'Smt.' in her signatures is evident from the document filed on behalf of the plaintiff, Exhibit PW-7/D3. In the said letter written by Smt. Rani Tewari to the Hony. Secretary of the Society on 26th November 1985, she has signed as 'Smt. Rani Tewari'. To be noted, the plaintiff has not questioned the signatures of Smt. Rani Tewari on the Relinquishment Deed in the replication. The only challenge was that the said Deed was executed under coercion.

109. Yet another objection raised on behalf of the plaintiff is that the signatures of Smt. Rani Tewari on the Relinquishment Deed are in running hand, whereas the signature in her cross-examination conducted in September 1995 is broken and not in a running hand. There is a complete mismatch between the admitted signatures of Smt Rani Tewari in her evidence on oath statement and the Ration Card on one hand and the signatures on the said



Deed on the other hand.

110. In my view, the aforesaid comparison is inapposite. At the time of her cross-examination in 1995, Smt. Rani Tewari was 92 years of age. There is a gap of 6 years between her signatures on the relinquishment deed (in 1989) and her signatures in cross-examination in 1995. It is not abnormal that a person of such advanced age would not have a free-flowing signature.

111. It is contended on behalf of the plaintiff that the relinquishment deed was executed by Smt. Rani Tewari under undue pressure and influence. However, the plaintiff did not lead any evidence to show that the Relinquishment Deed was executed on account of undue influence or coercion on behalf of the defendants no.1 and 2. Merely because the parties are related to each other or merely because the executant was old or of weak character, no presumption of undue influence can arise. (See *Jamila Begum v. Shami Mohd.*¹⁰)

112. Another objection of the plaintiff is that the Relinquishment Deed is of the year 1989, but was never disclosed by the defendants in their written statement dated 12th October 1992. The aforesaid relinquishment deed was filed before the Society and is mentioned in the resolution of the Society of 27th January, 1990 (Ex.PW-12/DA). However, it was only in July 2015 that the defendants no.1 and 2 disclosed the same by way of an additional written statement.

113. Even though Smt. Rani Tewari passed away on 13th August, 2000, the plaintiff claimed a share on the basis of being the legal heir of Smt. Rani Tewari only by way of amendment in the plaint only in March, 2014.

¹⁰ (2019) 2 SCC 727.



Therefore, the defendants asserted the existence of the Relinquishment Deed for the first time in the written statement filed in response to the amended plaint of 2014. The explanation given by the defendants for not disclosing the said deed at an earlier stage appears to be logical.

114. Yet another objection is that one of the attesting witnesses to the aforesaid Deed, namely Sh. SB Verma is stated to have died, however, no death certificate has been produced by the defendants. Sh. Krishan Singh, being one of the attesting witnesses in respect of the Relinquishment Deed, has been examined as a witness and he has proved the signatures of Smt. Rani Tewari in his evidence. Hence, there was no legal requirement to examine the other attesting witness.

115. It is vehemently contended on behalf of the plaintiff that if Smt. Rani Tewari knew about the existence of a Will executed by her husband, Late Shri J.P. Tewari, there was no requirement to execute a Relinquishment Deed since the aforesaid property had been bequeathed under the Will in favour of the defendants no.1 and 2.

116. In this regard, it has correctly been submitted on behalf of the defendants that Smt. Rani Tewari had executed the aforesaid Relinquishment Deed as the plaintiff's mother, Smt. Asha Tewari had refused to accept the Will of Shri J.P. Tewari and was claiming a share for her son contrary to the bequest made in the Will. In order to protect the said bequest, Smt. Rani Tewari has executed the said Deed as an additional document in favour of the defendants.

117. It is submitted on behalf of the plaintiff that the original of the Relinquishment Deed has neither been produced before this Court nor any explanation has been given regarding the non-production of the said Deed.



118. Sections 79 and 80 of the Evidence Act raise a presumption as to the genuineness of certified copies and documents forming part of official records. In this context, reference may be made to the judgment of the Supreme Court in *Prem Singh v. Birbal*¹¹, wherein it has been held that a registered document carries a presumption of validity and the onus lies on the person challenging the same to rebut such presumption.

119. The probative value and admissibility of certified copy of a registered document has been explained by the Supreme Court in its recent pronouncement in *Appaiya v. Andimuthu*¹², wherein it was held that documents registered before the Sub-Registrar are public documents within the meaning of Section 74(2) of the Evidence Act.

120. In the present case, the plaintiff has failed to place any cogent material on record to rebut the aforesaid statutory presumption or to demonstrate that the execution of the Relinquishment Deed was vitiated by fraud, coercion or misrepresentation.

121. Based on the evidence on record, the defendants have proved that the relinquishment deed has been validly executed.

122. In view of the discussion above, this issue is decided in favour of the defendants and against the plaintiff.

ISSUE NO.4: Whether the plaintiff is entitled a decree for partition of 1/3rd share in property No. 325, Deepali, Pitampura, Delhi?

123. The onus to prove this issue is on the plaintiff.

124. In terms of the Will dated 13th February 1980, executed by Sh. J.P.

¹¹ (2006) 5 SCC 353.

¹² 2023 SCC OnLine SC 1183.



Tewari, the Pitampura property was bequeathed by the testator in favour of two of his sons, namely Sh. Gyanendra Prasad Tewari (defendant no.1) and Sh. Subhash Tewari (defendant no.2). The said Will stands proved in view of my findings above in Issue no.4(a).

125. It is submitted on behalf of the plaintiff that the father of the plaintiff, Late Dr. Dhirender Prasad Tewari, had been contributing and making payments to the U.P. Cooperative Society towards the acquisition price of the said property. Specifically, on one occasion, a payment of Rs.2000/- was given by the plaintiff's father for which the Society had issued a receipt dated 28th June 1982 (Ex.PW-6/1).

126. The plaintiff has placed reliance on the evidence of PW-2, Dr. Asha Tewari (mother of the plaintiff), PW-6 and PW-7, who were the former Secretaries of the Society.

127. PW-2, in her evidence affidavit, has stated that PW-2, along with her late husband, Dr Dhirender Prasad Tewari, was a joint holder of Bank account no.195 with the Bank of India, Parliament Street Branch, New Delhi. It is stated that from the said account, an amount of Rs. 2,000 through a cheque dated 21st June 1982 was paid to the Society towards the Pitampura Property. It is stated that a letter dated 21st June 1982 was also issued along with the cheque in favour of the Society. She has identified the signature of her husband on the said cheque, which is Ex. PW-2/7. She has further stated that a receipt dated 28th June 1982 (Ex. PW- 6/1) was issued by the Society towards the said payment.

128. It is the defendants' case that the said payment of Rs. 2000 was towards the electricity charges. It is submitted that such a payment cannot annul the Will already executed in favour of the defendants no.1 and 2.



129. On behalf of the defendants, DW-6, Sh. Sham Bihari Lal Sharma, the Hon. Secretary of the Society, appeared as a witness on 28th April 1999 and brought the ledger in respect of the aforesaid plot (DW-6/1). In terms of the said ledger, the total payment made was Rs. 39,082/- towards the Pitampura property.

130. Even if it is assumed that a sum of Rs.2,000/- has been paid by the plaintiff's father, it would only be about 5% of the total cost. Further, the plaintiff has failed to prove that the amount of Rs.2,000/- was paid with the intent of claiming title/ownership in the Pitampura property. Therefore, the plaintiff has failed to prove that he was a co-owner of the Pitampura property and hence no title in the said property is vested in favour of the plaintiff's father.

131. Accordingly, the Pitampura property, *i.e. plot bearing No. 325 admeasuring 360sq. yds. by virtue of membership No. 1072 of UP Samaj Coop. House building Society ltd. Deepali, Pitampura, Delhi- 110034*, which is the subject matter of the Will of Sh. J.P. Tewari is not liable to be partitioned and shall devolve upon the beneficiaries to the said Will, *i.e. the defendants no.1 and 2*.

132. Hence, this issue is decided in favour of the defendants and against the plaintiff.

RELIEF

133. In view of my findings on the various issues, I hereby hold that the plaintiff is not entitled to the reliefs claimed in the suit.

134. Accordingly, CS (OS) 1558/2003 is dismissed.



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135. No order as to costs.

136. Decree sheet be drawn up accordingly.

**AMIT BANSAL
(JUDGE)**

APRIL 24, 2026

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