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

% *Date of decision: 22<sup>th</sup> May, 2025*

+ CS(OS) 189/2016

SH DEEPAK ARORA & ORS .....Plaintiffs

Through: Ms. Kajal Chandra and Ms. Hatanimawi, Advocates.

versus

SMT KAVITA ARORA & ORS .....Defendants

Through: Mr. J.S. Bakshi, Senior Advocate with Ms. Anshu Davar, Ms. Chandrika Singh, Mr. Navroop Bakshi and Mr. Amitesh Bakshi, Advocates for D1 and D2.

Ms. Vandana Khurana, Advocate for D6 to D15.

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+ EX.P. 56/2017

SH. DEEPAK ARORA & ORS .....Decree Holders

Through: Mrs. Kajal Chandra and Ms. Hatanimawi, Advocates.

versus

SMT. KAVITA ARORA & ORS .....Judgement Debtors

Through: Mr. J.S. Bakshi, Senior Advocate with Ms. Anshu Davar, Ms. Chandrika Singh, Mr. Navroop Bakshi and Mr. Amitesh Bakshi, Advocates for JD1 and JD2.

Ms. Vandana Khurana, Advocate for JD6 to JD15.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JUDGEMENT**

**JYOTI SINGH, J. (ORAL)**

**I.A. 40577/2024**

1. This is an application preferred on behalf of the Review Petitioners i.e., Defendants No. 1 and 2 in the suit, for condonation of delay of 2828 days in filing the review petition.
2. It is stated in the application that delay in filing the review petition



occurred on account of the fact that Defendants No. 1 and 2 were unaware of the original Will dated 26.06.1978 executed by Smt. Hans Kaur in their favour was in the custody and possession of Union Bank of India, which fact came to their knowledge only recently on account of the orders passed by this Court.

3. It is explained that on 20.05.2024, Court passed orders directing the General Manager, Union Bank of India to submit all original documents pertaining to the suit property, deposited with the bank against a loan, for which the property was mortgaged. On 21.08.2024, bank was again directed to file documents in possession and furnish a copy to the parties. However, in spite of these directions, copies of the documents were not furnished to Defendants No. 1 and 2 and being aggrieved, they approached the bank, where they were permitted to draw up a handwritten list of documents in possession of the bank.

4. It is further averred that upon perusal of the documents, Defendant No. 2 came across the original Will dated 26.06.1978 executed by Smt. Hans Kaur, from where it came to the knowledge of Defendants No. 1 and 2 that by operation of law of succession, Defendant No. 1 is the sole and exclusive owner of the suit property to the exclusion of other legal heirs. On this discovery, the review petition was immediately filed since the judgment dated 20.12.2016 cannot be sustained in law in light of the Will.

5. Mr. Bakshi, learned Senior Counsel for Defendants No. 1 and 2 argues that there is sufficient cause for condonation of delay inasmuch as Applicants have only recently come to know of the original Will. Moreover, the very purpose of enacting Section 5 in the Limitation Act, 1963 is to enable the Courts to do substantial justice. Reliance is placed on the



judgment of the Supreme Court in *Raheem Shah and Another v. Govind Singh and Others*, (2023) 18 SCC 764, where the Supreme Court condoned the delay referring to an earlier judgment in *Collector, Land Acquisition, Anantnag and Another v. Mst Katiji and Others*, (1987) 2 SCC 107, where it was held that expression ‘sufficient cause’ employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner, which subserves the ends of justice and that ordinarily, no litigant stands to benefit by lodging an appeal belatedly. Reliance is also placed on the judgment in *Mool Chandra v. Union of India and Another*, (2025) 1 SCC 625, where the Supreme Court condoned a delay of 425 days in filing Original Application before the Central Administrative Tribunal upon sufficient cause being shown.

6. *Per contra*, Ms. Kajal Chandra appearing for Plaintiffs submits that Defendants No. 1 and 2 have failed to give any reason much less making out sufficient cause for condonation of inordinate delay of 2828 days in filing the review petition and have also made false claims in the application that they were unaware of the alleged Will of Smt. Hans Kaur dated 26.06.1978. In the written statement filed in the suit as early as in August, 2016, Defendants No. 1 and 2 had themselves taken a plea that Smt. Hans Kaur had bequeathed the suit property in favour of late Shri Raj Kumar Arora. Yet, neither any Will was propounded nor filed or proved. It was also stated in the written statement that the suit property was mortgaged by Defendants No. 1 and 2 to the Union Bank of India against a loan and in light of these averments, it cannot be asserted today that Defendants No. 1 and 2 were unaware of the documents in the possession of the bank. The only plea for delay that the alleged Will was not in the knowledge of Defendants No. 1



and 2, is thus belied by the written statement.

7. Ms. Kajal Chandra places reliance on the judgment of High Court of Kerala in R.P. No. 497/2015 titled *Sathy M.P. & Anr. v. Sarasa & Ors.*, decided on 06.11.2023, where the Supreme Court held that laws of limitation are founded on public policy. Statutes of limitation are sometimes described as ‘statute of peace’ and unlimited and perpetual threat of limitation creates insecurity and uncertainty. The object of fixing time limit for litigation is based on public policy to have a definite life span for legal remedies for general welfare. For the same proposition, reliance is placed on *Basawaraj and Another v. Special Land Acquisition Officer, 2013 SCC OnLine SC 758; University of Delhi v. Union of India and Others, 2019 SCC OnLine SC 1634; State of Madhya Pradesh and Others v. Bherulal, 2020 SCC OnLine SC 849; and Postmaster General and Others v. Living Media India Limited and Another, 2012 SCC OnLine SC 1234.*

8. Heard learned counsel for the Plaintiffs and learned Senior Counsel for Defendants No. 1 and 2.

9. In order to seek condonation of delay, a party must satisfy the Court that ‘sufficient cause’ prevented the party from approaching the Court within the prescribed period of limitation. Statute of limitation is founded on public policy and as held by the Supreme Court from time to time, the aim is to secure peace and to suppress fraud and perjury, so as to quicken diligence and prevent oppression. In *Basawaraj (supra)*, the Supreme Court held that sufficient cause is a cause for which the party cannot be blamed and therefore, this expression embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined



from the viewpoint of a reasonable standard of a cautious man, which means that party should not have been negligent or the act should not suffer for want of *bona fides*. Approach of the Courts, while condoning delay, must be to ensure that the discretion is exercised judiciously and even though limitation may harshly affect rights of a party but it has to be applied with all rigour. Limitation cannot be extended for convenience of parties or on equitable grounds as that would amount to legislating.

10. With this in the backdrop, it needs to be examined whether Defendants No. 1 and 2 are deserving of exercise of discretion in their favour by condoning an inordinate delay of 2828 days in filing the present review petition. I have carefully gone through the application seeking condonation of delay. The singular reason in support of the plea of condonation is that Defendants No. 1 and 2 came upon the original Will dated 26.06.1978 executed by Smt. Hans Kaur, when they approached the Union Bank of India for copy of the documents directed by the Court vide orders dated 20.05.2024 and 21.08.2024. It is averred that they had no idea that the original Will was with the bank.

11. As rightly flagged by counsel for the Plaintiffs, this plea is completely belied by the written statement filed by Defendants No. 1 and 2 on 05.08.2016, wherein a plea was taken that Smt. Hans Kaur had bequeathed the suit property in favour of late Shri Raj Kumar Arora and that the suit property was mortgaged by the said Defendants with Union Bank of India to secure the loan from the bank. It is only natural that the property was mortgaged once the documents were furnished by Defendant No. 1 and/or Defendant No. 2 and if the Will dated 26.06.1978 is allegedly now found as a part of the documents, the question is whether Defendants No. 1 and 2 can



today plead that they have no knowledge that the alleged original Will was with the bank and the answer can only be in the negative. Therefore, clearly by their own stand, Defendants No. 1 and 2 were aware of the purported Will from the date the property was mortgaged, if not prior thereto and certainly on the date when the written statement was filed i.e., 05.08.2016. Therefore, plea that Defendants No. 1 and 2 became aware of the alleged Will only when they visited the bank, post orders passed by this Court, is completely false and contrary to their own stand in the written statement. No other ground is taken in the application. This Court is of the view that Defendants No. 1 and 2 have not made out sufficient cause for condonation of delay and instead, the application is predicated on a false premise, which in itself is enough to dismiss the application.

12. The judgments relied upon by Mr. Bakshi, learned Senior Counsel for Defendants No. 1 and 2, cannot be of any avail. In *Raheem Shah (supra)*, the delay in filing the regular first appeal against the decree of the Trial Court was 52 days. The Supreme Court observed that the delay not being inordinate, the first Appellate Court and the High Court were not justified in dismissing the appeal. In *Mool Chandra (supra)*, the delay was 425 days in filing original application before the Administrative Tribunal and the Supreme Court found as a matter of fact that the delay was succinctly explained by the Appellant that there was no intimation of withdrawal of the earlier O.A. by his counsel and the order dated 10.08.2018 did not reflect that such withdrawal was with the consent of the Appellant. The Supreme Court also found that on merit, the High Court had proceeded to confirm the order of the Tribunal on the footing that penalty imposed on the Appellant was a minor penalty, overlooking that in the earlier round of litigation, it



was held that punishment of dismissal was disproportionate to the alleged act. This Court sees no similarity in the two cases, either on the number of days of delay as also the reasons for condonation.

13. Accordingly, this application is dismissed as Defendants No. 1 and 2 have been unable to make out sufficient cause for condonation of delay.

14. While this Court sees no reason to enter into the merits of the review petition in light of the order passed in this application yet, on the insistence of Mr. Bakshi, learned Senior Counsel for Defendants No. 1 and 2 that there is merit in the review petition and considering that arguments were canvassed by the parties, I proceed to examine the petition on its merits.

**REV. PET. 349/2024 & I.As. 40578, 40579/2024**

15. This review petition is preferred on behalf of Defendants No. 1 and 2 under Section 114 read with Order XLVII Rule 1 CPC, 1908 seeking review of judgment dated 20.12.2016 passed in CS(OS) 189/2016.

16. The case set up by Defendants No. 1 and 2 in the review petition is as follows: -

(a) Smt. Hans Kaur (since deceased) was the absolute owner of immovable property bearing No. F55 and F56, out of Khasra No. 57 /56 situated at Kohla Pur Road, Kamla Nagar, Delhi ad measuring 337.32 sq. yards (approx.), which she had purchased vide Sale Deed dated 13.06.1950. The Sale Deed was duly registered on 12.10.1950 before Sub-Registrar vide Deed No. 1762, Book No. 1, Vol. 2612 on pages 27 to 33. The suit property is a residential property located within the municipal limits of Delhi.

(b) Smt. Hans Kaur executed a Will dated 26.06.1978, whereby she bequeathed the suit property to her son, Shri Raj Kumar Arora,



husband of Defendant No. 1 and father of Defendant No. 2 to the exclusion of all other legal heirs. Smt. Hans Kaur died on 08.01.1980 and on 31.10.2002, the suit property was mutated in the name of Shri Raj Kumar Arora basis the Will, who in turn executed a Will dated 27.09.2003, bequeathing the entire suit property in favour of Defendant No. 1/Smt. Kavita Arora to the exclusion of all others. On 08.12.2003, Shri Raj Kumar Arora expired and suit property was mutated in the name of Defendant No. 1 on 18.06.2004.

(c) After a period of 36 years from the date of death of Smt. Hans Kaur, a partition suit bearing No. CS(OS) 189/2016 was filed on 08.04.2016 by the Plaintiffs, who are grandsons of Smt. Hans Kaur, being children of her deceased son. In the plaint, Plaintiffs initially claimed that the suit property was in the name of late Shri Kartar Singh, however, the plaint was amended to plead that the property was in the name of Smt. Hans Kaur.

(d) On 05.08.2016, Defendants No. 1 and 2 filed written statement *inter alia* pleading that Smt. Hans Kaur had bequeathed the property to late Shri Raj Kumar Arora, who had further bequeathed the property in favour of his wife. Mutation letter reflecting the mutation in favour of Defendant No. 1 was placed on record. Objection was taken to the delay in filing the suit after 36 years. On 20.12.2016, Court passed a preliminary decree for partition declaring the respective shares of Plaintiffs and Defendants and on the same day, a final decree was also passed by sale of property and distribution of sale proceeds amongst the parties as per their respective shares declared in the preliminary decree.



(e) On 31.05.2017, summons were issued by the Court in EX.P. 56/2017 titled *Deepak Arora & Ors vs. Kavita Arora & Ors*. On 26.02.2019, Defendant No. 2 informed the Court that the suit property was mortgaged by his father with Union Bank of India for a loan of approximately Rs. 1 crore, in respect of which Defendant No. 2 was paying the instalment @ Rs. 1,25,000/- per month. Objection was raised by Defendants No. 1 and 2 to the maintainability of the EX.P. 56/2017 on account of insufficient stamping of the decree. By order dated 27.09.2019, the objections were rejected against which Defendants No. 1 and 2 filed EFA(OS) 19/2019 before the Division Bench on 31.10.2019, which was disposed of on 16.10.2020 with certain directions with respect to payment of Plaintiffs' share of the stamp duty on the decree and reimbursement of the same from the sale proceeds of the suit property as also dues of the bank.

(f) On 20.05.2024 in EX.P. 56/2017, Court directed the Judgment Debtors, including Defendants No. 1 and 2 to vacate the suit property within three months, failing which warrants of possession may be issued as also to disclose on affidavit the earnings from the suit property from the date of passing of the decree. Registry was directed to issue a letter to General Manager, Union Bank of India, Nehru Place Branch, Kamla Nagar, New Delhi to submit all original documents pertaining to the suit property, deposited with the Bank at the time of loan sanction. On 21.08.2024, counsel for Union Bank of India stated that the documents will be filed during the course of the day. Defendants No. 1 and 2 were bound down by their undertaking to vacate the suit property on or before 30.09.2024.



(g) Bank, however, did not supply copy of the documents and aggrieved, Defendants No. 1 and 2 approached the bank officials on 28.08.2024, whereafter documents were provided, which contained original Will dated 26.06.1978, executed by Smt. Hans Kaur, bequeathing the suit property to her son Shri Raj Kumar Arora to the exclusion of all other legal heirs. This triggered the filing of the present review petition, since the Decree dated 20.12.2016 is now unexecutable and suffers from apparent error of law, in light of the Will of Smt. Hans Kaur.

17. Mr. J.S. Bakshi, learned Senior Counsel for Defendants No. 1 and 2 argues that there is an error apparent on the face of the impugned judgment, declaring that the suit property is to be divided amongst all legal heirs of Smt. Hans Kaur. By Will dated 26.06.1978, executed by Smt. Hans Kaur, she had bequeathed the entire suit property in favour of Shri Raj Kumar Arora, husband of Defendant No. 1 and father of Defendant No. 2, to the exclusion of all other legal heirs and therefore, neither the Plaintiffs nor the co-Defendants are entitled to any share in the suit property. After the demise of Shri Raj Kumar Arora, the property came to the share of Defendant No. 1 by virtue of a Will executed by him on 27.09.2003. The property stands mutated in the name of Defendant No. 1 and therefore, she is the sole and exclusive owner of the suit property.

18. It is true that on 15.02.2019, 26.02.2019 and 27.09.2019, Defendants No. 1 and 2 had given undertakings to the Court to deposit the keys in respect of the suit property with the Registrar General of this Court and hand over vacant and peaceful possession of the property to the Auction Purchaser and subsequently, another undertaking was given on 21.08.2024



to hand over vacant physical possession to the Local Commissioner appointed by the Court, however, as Defendant No. 1 is now the sole and exclusive owner of the suit property, the undertakings have no meaning in law and the orders recording the undertaking deserve to be recalled along with the judgment and decree.

19. On the question whether a party, who gives an undertaking to the Court voluntarily and takes advantage of the undertaking, can be permitted to withdraw the undertaking, Mr. Bakshi, learned Senior Counsel for Defendants No. 1 and 2 relies on a judgment of the Supreme Court ***P. R. Deshpande v. Maruti Balram Haibatti, (1998) 6 SCC 507***, wherein the Supreme Court held that the principle of “*approbate and reprobate*” cannot be applied to shut out or preclude a person from invoking Constitutional remedy. A party to a *lis* can be asked to give an undertaking to the Court if he requires stay of operation of the judgment on the supposition that the order would remain unchanged, but no Court can scuttle or foreclose a statutory remedy of appeal or revision merely because of the undertaking, *albeit* there is no doubt that the person is bound to comply with the undertaking so long as the order remains alive and operative.

20. Ms. Kajal Chandra, learned counsel for the Decree Holder, *per contra*, opposes the review petition and argues that the same deserves to be dismissed as being not maintainable as also for the fact that no legal infirmity can be found with the judgment and decree dated 20.12.2016, whereby final decree of partition was passed by the Court by way of sale of the suit property and apportionment of shares in consonance with the preliminary decree, predicated on intestate succession.

21. It is submitted that Smt. Hans Kaur died intestate and accordingly, a



suit for partition, permanent injunction and rendition of accounts of the suit property was filed by the Plaintiffs, who are the grandsons of Smt. Hans Kaur, being children of her deceased son. Defendants No. 1 and 2 filed written statement pleading that suit property was bequeathed by Smt. Hans Kaur in favour of Shri Raj Kumar Arora, husband of Defendant No. 1 and father of Defendant No. 2. However, no details or particulars of any Will purportedly executed, were furnished in the written statement and the alleged Will was never filed in support of this stance. During the pendency of the suit, Plaintiffs filed I.A. No. 13230/2016 under Order XI Rule 12 of CPC, 1908 to direct Defendant No. 1 to place on record documents, on basis of which she claimed ownership of the property to the exclusion of other legal heirs.

22. On 06.12.2016, the application was dismissed as not pressed, on a pointed query by the Court from the Plaintiffs as to whether or not failure of Defendant No. 1 to prove her defence would be to the benefit of Plaintiffs and whether the Plaintiffs by filing such application were helping Defendants No. 1 and 2 to prove their case. It was further noted that Defendants No. 6 to 14 in their separate written statements were supporting the Plaintiffs. Significantly, the Court also observed that while Defendants No. 1 to 5 had pleaded in their written statements that Smt. Hans Kaur had in her lifetime only given the property to their predecessor, being the son of Smt. Hans Kaur but no Will or Gift Deed to this effect was pleaded. Accordingly, on 20.12.2016, a preliminary decree of partition was passed, declaring the shares of the parties. Parties agreed that the property was incapable of being partitioned by metes and bounds and thus on the same day, a final decree was passed by sale of the property and distribution of sale



proceeds amongst the parties as per their respective shares declared in the preliminary decree. As Defendants No. 1 to 5 were in exclusive possession, they were directed to vacate the suit property to the extent they were in possession and deliver the possession to the purchaser of the property. Parties were permitted to participate in the sale and bid for the property and if bid of any of the parties was the highest, such party was entitled to purchase the property. During the pendency of the suit, Defendants No. 1 and 2 neither propounded nor filed or proved any Will, purportedly executed by Smt. Hans Kaur in their favour and what they did not do at that stage, they cannot be permitted to do today, after the decree has been passed, which has attained finality and also on account of the fact that they have abandoned their rights, assuming they had any under the alleged Will by undertaking before the Executing Court on four occasions that they will hand over the vacant and peaceful possession of the property.

23. It is argued that the decree was never challenged by Defendants No. 1 and 2 and this very fact was noted by the Executing Court on 27.07.2018. Subsequently, vide order dated 15.02.2019, Court directed Defendants No. 1 to 5 to file an undertaking to hand over the keys to the Registrar General of this Court. The undertaking was accepted, as recorded in the order dated 26.02.2019. However, Defendants No. 1 to 5 filed an appeal on the ground that the EX.P. 56/2017 was not maintainable as the decree was not adequately stamped. The appeal was disposed of with a direction that Plaintiffs shall pay share of the stamp duty of Defendants No. 1 to 5 and will be entitled to reimbursement out of the sale proceeds. Stamp duty was subsequently paid by the Plaintiffs. Having given undertakings to the Court, Defendants No. 1 and 2 cannot be permitted to resile from the same on the



frivolous ground of a Will executed by Smt. Hans Kaur. If this plea is accepted at this belated stage, it will make a mockery of the decree, passed on admission of the parties, which is clearly reflected in the judgment and would be a travesty of justice since Plaintiffs have been waiting for decades to enjoy their share of the suit property.

24. It is argued that the review is predicated on a false submission that Defendants No. 1 and 2 were unaware of the Will and learnt of it only now after years together when they visited the bank to ascertain the status of the documents lying with the bank. This story is only for the purpose of overcoming the inordinate and unexplained delay in filing the review for the simple reason that in the two legal opinions/search reports with respect to the suit property dated 14.09.2004 and 07.06.2005, it is clearly stated that the alleged Will dated 26.06.1978 was provided to the bank by Defendant No. 1 herself. Even otherwise assuming that any such Will was executed, the same cannot be propounded and proved at this belated stage.

25. Heard learned counsel for the Plaintiffs and learned Senior Counsel for Defendants No. 1 and 2.

26. Broadly understood, case of Defendants No. 1 and 2 in the review petition, seeking review of judgment dated 20.12.2016, is predicated on a Will dated 26.06.1978, whereby Smt. Hans Kaur bequeathed the entire suit property in favour of Shri Raj Kumar Arora, who in turn executed a Will dated 27.09.2003, bequeathing the property in favour of Defendant No. 1. The argument is that once the property is bequeathed in favour of Defendant No. 1, no other legal heir is entitled to the property and thus the final decree by sale of suit property and distribution of sale proceeds amongst all legal heirs in respective shares as declared by preliminary decree is unsustainable



in law.

27. The moot question that arises for consideration in this review petition is whether Defendants No. 1 and 2 can set up a Will at this stage to claim rights on the suit property to the exclusion of other legal heirs and whether there is any legal infirmity in the judgment and decree dated 20.12.2016. It is undisputed that when Defendants No. 1 and 2 filed written statement on 05.08.2016, they had taken a stand that the property was bequeathed by Smt. Hans Kaur in favour of Shri Raj Kumar Arora. However, no material particulars of the Will were pleaded. Order VI Rule 1 CPC provides that 'pleading' shall mean plaint or written statement. Order VI Rule 2 CPC provides that every pleading shall contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be. Expression 'material facts' is not defined anywhere, however, material facts would be those facts on which a party relies for his claim or defence and facts on which Plaintiff's cause of action or Defendant's defence depend and the facts which must be proved to establish Plaintiff's right to the relief claimed in the plaint or Defendant's defence in the written statement. 'Material particulars' are details of the case set up by the parties and are such pleas which are necessary to amplify, refine or explain material facts. It is settled that if material facts are omitted, a party should not be allowed to raise a contention on a particular point even if some material is available in the evidence. On the other hand, the Court may permit the party to raise material particulars if material facts on those aspects have been pleaded, on the basis of the evidence unless the opposite party is thereby materially prejudiced. In the present case, the material fact of execution of a Will dated 26.06.1978 was completely missing in the



written statement filed by Defendants No. 1 and 2. Admittedly, neither the original nor the photocopy of the Will was ever filed. Therefore, at this stage, Court cannot permit Defendants No. 1 and 2 to set up the Will dated 26.06.1978 to seek a review of the judgment dated 20.12.2016, when no steps were taken over the years to even amend the written statement.

28. It is pertinent that on 06.12.2016, during the pendency of the suit, Court took up an application filed by the Plaintiffs being I.A. No. 13230/2016 seeking a direction to Defendant No. 1 to discover on oath and place on record original documents on which she was claiming ownership of the property. On a query by the Court whether or not the failure of Defendant No. 1 to prove her defence would be to the benefit of the Plaintiffs and whether or not the Plaintiffs by filing such an application were helping Defendants in proving their case, the application was not pressed. However, the fall out of this order is that Defendants No. 1 and 2 were completely put to notice that there was nothing on record to prove their exclusive ownership to the suit property and even at this stage, no steps were taken to produce the alleged Will. Judgment dated 20.12.2016 indicates that there was no opposition from Defendants No. 1 and 2 in passing a decree of partition and the only objection was that there were other properties of which they were entitled to seek partition.

29. Since there was no opposition, in the presence of the counsels for the parties, Court held that on the pleadings as existing, no issue requiring a trial arose and in this light, a preliminary decree was passed declaring the shares of the parties. Since the counsels stated that considering the number of shares and the size of the property, it was not capable of partition by metes and bounds, a final decree was passed on the same day for partition by sale



of the property and distribution of the sale proceeds amongst the parties as per their respective shares declared in the preliminary decree. Since Defendants No. 1 to 5 were in exclusive possession of the property, they were directed to vacate their respective portions and deliver possession to the purchaser. It is evident that till the passing of the final decree, Defendants No. 1 and 2 did not propound the Will dated 26.06.1978 and/or seek its probate.

30. It is a settled law that Article 137 of the Limitation Act, 1963 applies to application for grant of probate or letters of administration. Article 137 provides a limitation period of three years for filing an application for which no period of limitation is provided elsewhere and the three years commence from when the right to apply accrues. It is true that probate of a Will is not mandatory if the same is not contested, however, the moment there is a contest to the Will, the party propounding the Will is required to seek a probate. In *Kunvarjeet Singh Khandpur v. Kirandeep Kaur and Others*, (2008) 8 SCC 463 and *Krishan Kumar Sharma v. Rajesh Kumar Sharma*, (2009) 11 SCC 537, the Supreme Court held that Article 137 shall apply to petitions for grant of probate and letters of administration. Division Bench of this Court in *Pratap Singh and Another v. State & Another*, 2010 SCC OnLine Del 2715, followed these judgments and this position has been reiterated by the Supreme Court in *Sameer Kapoor and Another v. State Through Sub-Division Magistrate South, New Delhi and Others*, (2020) 12 SCC 480. Therefore, it is clear that if the Will is contested and a party claims interest adverse to the bequeather, the party claiming rights under the Will will have to apply for probate of the Will and this can be done only within three years when the right to apply accrues.



31. The next question as to when the right to apply accrues need not detain this Court as this issue has been decided by the Supreme Court in *Pamela Manmohan Singh v. State & Ors., 1999 SCC OnLine Del 1077*, wherein it was held that period of three years would commence from the date on which the legatee to a Will could be justifiably ascribed with the knowledge that the Will on which his claim is founded is likely to be disputed by other persons, especially the natural heirs of the testator. In *Pratap Singh (supra)*, Division Bench was seized of a case where Appellant had filed a probate petition on 05.09.1997. Respondent No. 2 had filed a civil suit for partition and rendition of accounts on 28.05.1997 *inter alia* alleging that the suit properties were joint family properties. Prior to the said suit, Respondent No. 2 had filed another civil suit in 1984 for declaration that the alleged Will dated 11.03.1983 was null and void, which was disposed of with certain directions on 19.03.1996. Applying the judgments of the Supreme Court aforementioned, the Division Bench held that the right to apply for probate accrue to the Appellant on the date of knowledge of the 1984 suit and probate petition being filed beyond three years period of limitation was barred by limitation.

32. Coming to the facts of this case, Plaintiffs filed the present suit on 08.04.2016 seeking partition, permanent injunction and rendition of accounts etc. with respect to the suit property. On 05.08.2016, written statement was filed by Defendants No. 1 and 2. Therefore, institution of the suit for partition was a clear indication to Defendants No. 1 and 2, alleged legatees of Will dated 26.06.1978 that the Will was likely to be disputed by the Plaintiffs, who were the natural heirs of Smt. Hans Kaur. However, not only was the Will not set up in defence by furnishing material facts and/or



particulars, no steps were taken to file a probate petition within three years from the knowledge. Therefore, even if Defendants No. 1 and 2 were to file a probate petition today, the same will be time barred. Hence, what Defendants No. 1 and 2 cannot do directly, they cannot be permitted to do indirectly by filing a review petition.

33. This matter can be examined from another angle. It is settled law that if two or more rights are available to a party on the same subject, it would be open to a party to elect which one right it would like to avail of, called the Doctrine of Election. In *Parma Nand Ahuja v. Satya Dev Ahuja and Others, AIR 1973 DEL 190*, the Appellant had instituted a suit against his two step brothers, a step sister and step mother for partition of his share in the properties belonging to his father stating that his father had executed a Will dated 16.10.1956 but he had chosen to place his claim on 1/5<sup>th</sup> share of the property under law of inheritance and did not claim benefits under the Will. The Trial Court framed an issue viz. whether the suit on the basis of Hindu Law or Hindu Succession Act is not maintainable because of the allegation that the deceased left a Will. Learned Single Judge of this Court dismissed the suit on this issue holding that Section 8 of the Hindu Succession Act, 1956 would apply to a male Hindu who died without leaving a valid Will and where there was a valid Will, property cannot devolve under Section 8. The Division Bench set aside the findings and held that Appellant was entitled in law to confine his claim on the basis of Hindu Succession Act. This judgment was followed by another Division Bench in *Vikram Singh and Another v. Ajit Inder Singh, 2014 SCC OnLine Del 847* and learned Single Judge in *M/s. Uma Ghate v. Mr. Umesh Phalpher, 2016 SCC OnLine Del 6179*, holding that upon the death of a person if there is a



bequest by way of a Will, legal heirs can elect whether to proceed to inherit the estate of the deceased as per the Will or inherit the estate as legal heirs and successor-in-interest of the deceased.

34. The proposition of law that comes forth is that even if there is a Will, a legatee can choose to confine his relief to proceed to inherit the estate of the deceased as legal heir and successor-in-interest of the deceased. In the present case, in my view, Defendants No. 1 and 2 had elected to inherit the estate of Smt. Hans Kaur by succession under Section 8 of the Hindu Succession Act, 1956 and this is clear from two-fold facts. Firstly, during the suit, it was never pleaded or proved that Smt. Hans Kaur had executed the alleged Will dated 26.06.1978. Not even a photocopy of the Will was filed. In their presence and with their consent, the Court passed an order that no issues arose for trial of the suit and the final decree was passed. This decree has not been challenged till date, which is the first indicator of Defendants No. 1 and 2 having elected to abandon their rights under the alleged Will dated 26.06.1978, besides the fact that even till date, Defendants No. 1 and 2 have not filed a probate petition. Even thereafter, when the execution was filed, on 15.02.2019, Defendants No. 1 and 2 stated before the Court that they shall file an undertaking to deposit the keys in respect of the vacant possession with the Registrar General of this Court within two months. Court directed them to file the undertaking within one week. Again, on 26.02.2019, Defendant No. 2 undertook on his behalf as also on behalf of Defendant No. 1 that vacant and peaceful possession will be handed over to the auction purchaser within one month of the auction by the Local Commissioner. The undertaking was accepted by the Court. After the Local Commissioner was appointed and the matter came up before the



Court on 28.01.2024, yet again Defendants No. 1 and 2 along with Defendants No. 3 to 5 requested the Court to be given one additional month to vacate the property and undertook to hand over vacant peaceful possession to the Local Commissioner on or before 30.09.2024. Court recorded their undertaking separately and held that they shall remain bound by the same. Each of these orders not only indicate a solemn undertaking to the Court on multiple occasions to vacate the property but also indicates the clear abandonment of the rights of Defendants No. 1 and 2 to claim under the alleged Will dated 26.06.1978. Having clearly elected to give up the rights under the Will dated 26.06.1978, Defendants No. 1 and 2 cannot today assert a right to claim the suit property to the exclusion of others.

35. For all the aforesaid reasons, this Court finds no merit in the review petition and the same is dismissed.

**EX.P. 56/2017 & CCP (O) 108/2024, EX. APPL. (OS) 27/2018, 167-168/2019, 225/2019, 265/2019, 943/2020, 3707/2022, 810/2024**

36. Ms. Kajal Chandra, is right in her submission that the decree was passed on 20.12.2016 and the execution was filed in 2019 and despite passage of nine years from the decree and six years from the filing of the execution and four undertakings to the Court to hand over vacant possession of the suit property, Defendants No. 1 and 2 have still not handed over the possession.

37. Let warrants of possession be issued against the Judgement Debtors in respect of suit property bearing No. F55 and F56, out of Khasra No. 57 /56 situated at Kohla Pur Road, Kamla Nagar, Delhi admeasuring 337.32 sq. yards (approx.), for taking possession of the same, however, to be enforced, subject to any stay order being passed by any Court.



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38. List on 21.07.2025 before the learned Administrative Civil Judge, Central, Tis Hazari Courts, for appointment of Bailiff and list the present execution petition before this Court on 18.08.2025.

**JYOTI SINGH, J**

**MAY 22, 2025/shivam/sahil sharma**