



2026:DHC:4569



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 11th May, 2026**
Pronounced on: 21st May, 2026

+ **RFA 483/2026, CM APPL. 31386/2026, CM APPL. 31387/2026**

DILEEP SINGH

S/o Late Sh. Parshuram Singh
R/o 122B/1B, Ground Floor,
Gautam Nagar, Delhi-110049.

.....Appellant

Through: Mr. Nishant Das, Mr. Aditya Rana
and Ms. Aatrayi Das, Advocates
along with Appellant in person.

versus

PARSHURAM SINGH THROUGH HIS LRs

1. **ABHAY SINGH**

S/o Late Sh. Parshuram Singh
R/o 122B/1B, First Floor, Gautam Nagar,
Delhi-110049.

2. **GIRIJA DEVI**

R/o 122B/1B, First Floor, Gautam Nagar,
Delhi-110049.

.....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as*



'CPC') has been preferred by the Defendant/Appellant, Dileep Singh, to set aside the Judgment and Decree dated 23.03.2026, whereby the learned District Judge has decreed the Suit of the Plaintiff/Respondent for Rs.2,05,326/- along with *pendent lite* and future interest @ 6% per annum from the date of institution of the Suit till the date of realization.

2. The Civil Suit bearing CS DJ 6045/2016 was filed by the Respondent/Plaintiff for Recovery of Rs.3,07,990/- along with *pendent lite* and future interest.

3. The **facts as narrated in the Plaint**, were that the Defendant, *Dileep Singh is the son of the Plaintiff* and grandson of Late Sh. Prabhu Nath Singh (*Grandfather of the Plaintiff*), who expired on 01.08.2009. During the lifetime Sh. Prabhu Nath Singh from his own funds and resources purchased *property bearing No.122-B/1-B, Gautam Nagar, New Delhi*, where the Defendant as well as the Plaintiffs are residing.

4. Late Sh. Prabhu Nath Singh had opened Joint Accounts in various Banks and Post office in the name of himself, the Plaintiff and the Defendant, wherein all savings were deposited by him. The Accounts were operated by him and he manage all household affairs, during his lifetime. Being illiterate, the Plaintiff was not aware of the details of the Bank Accounts and Post Office Accounts, maintained by Late Prabhu Nath Singh.

5. After the demise of Sh. Prabhu Nath Singh, the Accounts were operated by the Defendant/Appellant, Dilip Singh, since the Plaintiff was an illiterate person and had complete faith in the Defendant, being his son. Whenever the Plaintiff asked for money for running the household or for his personal expenses, as were earlier given by Late Prabhu Nath Singh, the



attitude and behavior of the Defendant towards the Plaintiff became sour/hostile and he started quarreling with, abusing, assaulting and even threatening the Plaintiff, while flatly refusing to pay him a single penny. It was further alleged that the Defendant neither disclosed the details of the Bank and Post Office Accounts opened by Late Sh. Prabhu Nath Singh nor handed over any documents pertaining thereto, despite repeated requests.

6. The *Defendant filed a Probate Case for grant of Will dated 26.06.2007* executed by Late Sh. Prabhu Nath Singh, where Plaintiff was also a party. The said Probate case is stated to be pending.

7. On perusal of the Will, it was revealed that the Plaintiff had an equal share in the Bank Accounts as well as Post Office Accounts jointly held in the names of Late Sh. Prabhu Nath Singh, the Plaintiff and the Defendant. The Plaintiff thereafter approached the Defendant and requested him to provide photocopies of the relevant documents, but he allegedly avoided doing so and also failed to pay him any amount.

8. At the time of the demise of Late Sh. Prabhu Nath Singh, the younger son of the Plaintiff was a minor aged about 14 years. However, after he attained the age of majority, the Plaintiff informed him about his apprehensions regarding the Bank Accounts. Thereafter, the Plaintiff along with his younger son visited the Central Bank, Gulmohar Park Branch, New Delhi and met the Bank Manager.

9. After enquiry, he was informed by the Bank Manager that Late Sh. Prabhu Nath Singh had opened Savings Account No.1010562041 in the joint names of himself, Plaintiff and the Defendant and issued a duplicate Pass Book to the Plaintiff, on 10.09.2012.



10. Upon perusal of the Passbook, the Plaintiff was shocked to discover that as on 30.11.2009, around the time of demise of Sh.Prabhu Nath Singh, there was a balance of Rs.6,15,978.68/- in the said account. However, after his demise, the Defendant had fraudulently and with *mala fide* intent withdrawn the money from the Joint Account, which was wholly illegal. The Defendant never informed the Plaintiff regarding the withdrawal of the said amount, which shows his deceitful and fraudulent intention of grabbing/usurping the entire amount.

11. The Plaintiff claimed that *he is entitled to 50% share in the bank balance of Rs.6,15,978.68, which was lying in the Bank Account of Late Sh. Prabhu Nath Singh on the date of his demise on 01.08.2009, in terms of the Will executed by him*, however the Defendant refused to give him a penny.

12. A Legal Notice dated 10.08.2013 was served upon the Defendant by Speed Post, despite which he failed to pay the amount.

13. Consequently, the **Plaintiff instituted a Suit for Recovery of Rs.3,07,990/- along with interest @ 12% per annum.**

14. The Defendant, in his *Written Statement*, claimed that the Plaintiff had not approached the Court with clean hands and has concealed material facts. The Probate of the Will executed by Late Shri Prabhu Nath Singh is pending in the Court of learned ADJ, New Delhi. In view of the pendency of the Probate Petition, the present Suit as claimed is not maintainable and is liable to be dismissed.

15. In the month of December 2009, in the presence of the family members of the Defendant's wife, the disputes between the parties were amicably settled and the parents of the Defendant took the entire gold



jewellery, towards full and final Settlement. A sum of Rs.1,00,000/- in cash was also paid by the Defendant, to them. It was, therefore, contended that the present Suit, having been filed after a lapse of more than four years, was not maintainable. *Furthermore, the Suit is stated to also barred by limitation.*

16. On *merits*, all the averments made in the Plaintiff were denied. It was submitted that the Plaintiff was a habitual drinker from the very beginning and, on account of such drinking habits, had suffered memory loss and remained under treatment and observation at AIIMS, Delhi for a considerable period of time.

17. According to the Defendant, his grandfather, Sh. Prabhu Nath Singh, had somehow managed to secure employment for him in AIIMS as a DHG/Private Guard, but he was unable to continue owing to his mental incapacity. It was asserted that this was the reason why Late Sh. Prabhu Nath Singh, while executing his Will, bequeathed his properties in favour of his grandsons and not in favour of the Plaintiff.

18. The Defendant further denied the allegations that he had concealed the details of the Bank and Post Office Accounts opened by Late Shri Prabhu Nath Singh. It was claimed that the Plaintiff were fully aware of the said Accounts, from the very beginning. It was further asserted that a Settlement had already taken place in December, 2009 and all amounts due had been duly paid to them. All parties were living happily thereafter. The Plaintiff, at the instance of her younger son, had instituted the present Suit despite the fact that the younger son had been brought up by the Defendant with utmost care and affection.



19. It was, therefore, submitted that there is no merit in the present Suit which is liable to be dismissed.

20. The Plaintiff in the **Replication** re-affirmed his assertions as made in the Plaint.

21. On the pleadings of the parties, **Issues** were framed on 11.07.2014 as under:

“(i) Whether the Saving Account No.101056041 at Central Bank, Gulmohar Park Branch, New Delhi was a joint account of Late Prabhu Nath Singh, the plaintiff and the defendant in which plaintiff is entitled to get 50% share? OPP

(ii) Whether the defendant had illegally and fraudulently withdrawn / transferred a sum of Rs.6,14,081.15/- from the above-said joint account without giving 50% share to the plaintiff? OPP

(iii) Whether the plaintiff already took gold jewellery and a sum of Rs.1,00,000/- towards full and final settlement of the dispute OPD

(iv) Whether the plaintiff is entitled to any relief.”

22. Thereafter *vide* Order dated 08.07.2025, the following additional issue was framed:

“Issue No.3A Whether the Suit is barred by limitation? OPD”

23. The Plaintiff in support of his case examined his wife and power of attorney holder Mrs. Girjia Devi as **PW-1** who deposed on the same lines as the averments made in the Plaint. She proved all the documents Ex.PW1/1 to PW1/7 and the same were not under challenge.



24. **PW-2**, Abhay Singh, younger son of the Plaintiff corroborated the testimony of **PW-1**.
25. The Defendant examined himself as **DW-1** and deposed on similar lines as his defence in the Written Statement.
26. **DW-2**, Smt. Seema Singh, wife of Defendant corroborated his testimony.
27. **DW-3**, Abhishek Singh, nephew of his wife, who was witness to the Settlement, supported that the oral Settlement had taken place between the family members in December 2009.
28. **DW-4** is Sh. Sandeep Singhal, Senior Manager, Central Bank of India, Gulmohar Park, New Delhi, who proved the documents pertaining to Account No.1010562041 (Old No.5698), opened in the year 1989 Ex.DW4/1. He further deposed that the name of Dileep Singh (Appellant) in this Account was added on an Application of Shri Prabhu Nath Singh Ex.DW4/2.
29. The **Ld. District Judge** considered the evidence of the parties and observed that no adverse inference could be drawn merely because the Plaintiff had not entered the witness box, since it is not mandatory for a Plaintiff to personally depose in every case. It was noted that **PW-1**, being the wife of the Plaintiff, was fully conversant with the facts of the case and competent to depose regarding the alleged oral settlement, especially when the Defendant himself claimed that the settlement was entered into with both the Plaintiff and **PW-1**. The Ld. District Judge further noted that the Defendant failed to establish any prejudice caused by the Plaintiff not stepping into the witness box.



30. The learned Trial Court observed that the Will dated 26.06.2007, Ex.PW1/3, executed by Late Prabhu Nath Singh, was not in dispute. Though Section 68 of the Indian Evidence Act, 1872 mandates the examination of at least one attesting witness to prove a Will, however in the present case, neither the genuineness, validity nor due execution of the Will was challenged. In fact, the Will stood admitted by both the parties. It was, thus, held that the Will dated 26.06.2007 Ex.PW1/3, stands duly admitted and proved.

31. It was further observed that in view of the clear, specific and unequivocal admissions of the Defendant, it was sufficient to dispense with the requirement of examination of one Attesting Witness to the Will under Section 68 Evidence Act, as has been held in the case of Thayyullathil Kunhikannan vs. Thayyullathil Kalliani AIR 1990 Ker 226 (DB); Boomathi vs. Murugesan 2023 SCC OnLine Mad 8488; P. Radha vs. Irudayadoss, 2022 SCC OnLine Mad 886; Darisi Masthanamma vs. Mandiga Ram Krishna AIR 2006 AP 286 and Rajeev Gupta vs. Prashant Garg 2021 SCC OnLine All 2253.

32. Furthermore, a Judgment dated 11.05.2016 had been passed in Probate Case No.120/2011, whereby the Will was held to be duly proved. It was, therefore, concluded that, in terms of the Will, the cash balances lying in the joint Accounts maintained with various Banks and Post Offices were to devolve upon the surviving Joint Holders equally.

33. It was observed that, around the time of demise of Late Sh. Prabhu Nath Singh, the balance lying in Savings Account No. 1010562041 was Rs.6,15,978.68/-. Accordingly, it was held that the Plaintiff had established,



on a preponderance of probabilities, that the Defendant had withdrawn/transferred an amount of Rs.6,50,417/- from the said Account and had misappropriated the Plaintiff's share therein amounting to Rs.3,25,208/-. However, since the Plaintiff had restricted the claim in the Suit to Rs.3,07,990/-, she was held entitled only to the said amount.

34. In regard to the objection, that the claim was barred by limitation, the learned District Judge observed that the present case was not a simplicitor Suit for Recovery, but pertained to enforcement of the Plaintiff's entitlement in the money lying in the joint Account on the basis of the Will, for which there exists a continuing cause of action and there was no prescribed limitation period, unless one co-sharer is excluded from the property by the other.

35. Alternatively, even if it is held that Article 113 of the Schedule to the Limitation Act, 1963 would apply to a Suit for partition of movable property/money lying in a Bank Account, for which the prescribed limitation period is three years from the date on which the right to sue accrues, the right to sue would accrue only when the Defendant refused to give the Plaintiff her share in the amount, to which she was entitled.

36. The learned District Judge noted that no specific date of demand emerged from the Plaintiff's evidence, nor was any specific denial communicated to her. Rather, the Defendant himself had stated that no request had ever been made by the Plaintiff and, therefore, there was no occasion for refusal. It was thus, observed that neither had the Plaintiff specifically demanded his 50% share earlier, nor had the Defendant expressly denied the same.



37. At best, it could be inferred that the request for payment was made after issuance of the duplicate Passbook on 10.09.2012 or upon service of the Legal Notice dated 10.08.2013. Since the matter pertained to the rightful share of the Plaintiff in the money lying in the Account and was not merely a simplicitor Suit for Recovery, it was held that the date for limitation was to be reckoned from 10.09.2012 or from 10.08.2013.

38. Even otherwise, as per the passbook Ex. PW1/4, an amount of Rs.3,80,000/- had been withdrawn from the joint account on 12.11.2010. While the Defendant was entitled to withdraw his own share from the said account, he could not have withdrawn the share belonging to the Plaintiff. Since the Plaintiff's share was held to be Rs.3,07,990/-, it was concluded that the same stood misappropriated on 12.11.2010. Accordingly, even assuming limitation were to run from the date of such misappropriation, the Suit had been instituted on 12.09.2013, it was held to be within limitation.

39. It was thereafter noted that, during the pendency of the Suit, the Plaintiff had expired and his wife along with his son, Mr. Abhay Singh, were substituted as his legal representatives *vide* order dated 31.05.2022.

40. Since the Defendant was also one of the legal heirs of the deceased Plaintiff and no Will excluding him had been pleaded or proved, the Ld. District Judge held that the recoverable amount of Rs.3,07,990/- would devolve proportionately upon all the legal heirs. Accordingly, while exercising powers under Order VII Rule 7 CPC and taking note of the subsequent events, the relief was moulded and the substituted LRs of the Plaintiff were held entitled only to their 2/3rd share in the recoverable amount, quantified at Rs.2,05,326/-, along with *pendente lite* and future



interest @ 6% per annum. **Accordingly, the Suit was decreed for a sum of Rs.2,05,326/-along with interest @ 6% per annum.**

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

42. The *grounds of challenge* are that the Suit was barred by limitation under Article 113 of the Limitation Act,1963, and that the learned Trial Court erred in recharacterizing it as a Partition Suit, merely to circumvent the bar of Limitation. It is contended that the Suit was essentially one for recovery of a definite amount allegedly withdrawn from the Bank Account and, consequently, the right to sue accrued from the date of alleged wrongful withdrawal and/or when the Respondent admittedly became aware of the operation of the Account.

43. The Plaintiff obtained the duplicate passbook on 10.09.2012 and was thus fully aware of the withdrawals from that date, yet the Suit was filed only on 12.09.2013.

44. The learned Trial Court erroneously treated the dispute as one akin to a partition or co-sharer dispute and consequently held that limitation would arise only upon '*demand and refusal*', which is applicable to genuine partition or co-sharer disputes, and not to a claim founded on alleged misappropriation of funds. It is further submitted that the alleged wrongful withdrawals commenced from 21.04.2010 and limitation ought to have been reckoned therefrom.

45. The learned Trial Court has further acted in derogation of the settled principle of *dominus litis* by impermissibly re-characterising a recovery suit as one for partition, solely to avoid the bar of limitation. Reliance has been



placed on Trojan & Co. Ltd. vs. N.N. Nagappa Chettiar MANU/SC/ 0005/ 1953, wherein the Supreme Court held that a case must be strictly construed on the pleadings and no relief can be granted on a case that was not pleaded or introduced by way of amendment.

46. Reliance has also be placed on Sopan Sukhdeo Sable vs. Assistant Charity Commissioner (2004) 3 SCC 137, wherein it was held that the Plaint must be read as a whole and cannot be reinterpreted, so. as to alter its true import and character.

47. It is further contended that, even if the registered Will dated 26.06.2007 executed by Late Sh. Prabhu Nath Singh is assumed to have been duly proved, the said Will was the subject matter of Probate Case No.120/2011, wherein Letters of Administration had been granted. It is submitted that the learned Trial Court materially erred in mechanically converting the directions contained in the Will into a money decree without proper adjudication of the rights of the parties flowing from the testamentary disposition and without considering the principles governing testamentary succession.

48. The Will merely directed that the cash balances lying in Joint Account or Post Office Accounts would devolve upon the respective joint holders thereof and does not *ipso facto* create any fixed or quantified monetary liability. The learned Trial Court failed to adjudicate upon the nature of the Joint Accounts, the manner of their operation, the extent of contributions made by the parties, and the actual subsisting balance therein, while mechanically granting 50% of the amount as an entitlement under the Will against the Appellant.



49. It is thus contended that the impugned Judgment suffers from a fundamental error in converting a disputed testamentary claim into a decree for recovery without proof of entitlement in accordance with law.

50. The *testimony of DW-2, Smt. Seema Singh*, wife of the Appellant, was completely excluded, thereby prejudicing the Appellant's case on the question of the alleged family settlement. DW-2 was partly cross-examined before she failed to appear for further cross-examination and the defence evidence came to be closed on 08.08.2024. The partial cross-examination of DW2 contained material aspects pertaining to the alleged Settlement and the complete exclusion of her testimony on the ground of non-appearance, without granting the Appellant an opportunity either to re-examine the witness or to substitute the witness, has resulted in grave prejudice and miscarriage of justice and is violative of the principles of natural justice.

51. The learned Trial Court failed to properly appreciate the legal effect of the registered and probated Will dated 26.06.2007 and erred in granting relief without proper adjudication of the rights flowing from the testamentary disposition. The Will merely directed that the cash balances lying in the Joint Accounts would devolve upon the respective joint holders and that the Respondent was required to independently establish her entitlement in accordance with the terms of the Will and the surrounding factual matrix, including the nature and operation of the Account, the extent of contributions and the actual subsisting balance therein before granting the decree which has not been undertaken.

52. This approach is contrary to the law laid down in *Bachhaj Nahar vs. Nilima Mandal* (2008) 17 SCC 491, wherein the Supreme Court held that in



Civil Suits, grant of relief is circumscribed by several factors such as pleadings, prayer, court fee paid, limitation, the parties to the Suit, *res judicata*, *estoppel*, acquiescence and non-joinder of cause of action of the parties.

53. The learned Trial Court failed to undertake proper adjudication of entitlement under the Will and that the findings returned are perverse, contrary to the weight of evidence and violative of the principles of natural justice, thereby warranting interference by this Court. Reliance has also been placed upon *Ishwar Dass Jain vs. Sohan Lal*, (2000) 1 SCC 434, wherein it was held that interference with findings of fact is warranted where material or relevant evidence has not been considered and such non-consideration has materially affected the conclusion arrived at by the Court.

54. The learned Trial Court has failed to appreciate that the Defendant's denial of any demand, cannot simultaneously be used to defer limitation and to support the Respondent's claim, thereby rendering the reasoning self-contradictory.

55. The learned Trial Court has failed to apply consistent standard of proof subjecting the Appellant's defence to a higher threshold while accepting the Respondent's case without strict scrutiny.

56. The impugned Judgment is further vitiated by inadequate and contradictory reasoning, non-consideration of relevant evidence and disregard of settled legal principles, resulting in decision-making process that suffers from clear non-application of mind.

57. Hence, a prayer is made that the impugned Judgment and Decree be set aside.



Submissions heard and record perused.

58. The Plaintiff/Respondent had instituted the present Suit seeking recovery of Rs.3,07,990/- along with *pendent lite* and future interest, claiming the said amount as his entitlement under the Will dated 26.06.2007 executed by his father, Late Sh. Prabhu Nath Singh.

59. The case of the Plaintiff, in essence, was that his father, Late Sh. Prabhu Nath Singh had, during his lifetime, executed a registered Will dated 26.06.2007, which already stands probated in duly constituted probate proceedings. Under the said Will, the Defendant/Appellant and the Plaintiff/Respondent, being joint holders along with Late Sh. Prabhu Nath Singh in the concerned Bank Account, were entitled to the money lying therein upon his demise.

60. It is not in dispute that Late Sh. Prabhu Nath Singh maintained Savings Bank Account No. 1010562041 jointly in the names of himself, the Plaintiff and the Defendant. It is equally undisputed that Late Sh. Prabhu Nath Singh expired on 01.08.2009 leaving behind the aforesaid registered Will, exhibited as Ex.PW1/3, which has neither been disputed nor challenged by either party. It is also a matter of record that the said Will already stands duly proved in Probate Case No.120/2011, wherein Letters of Administration were granted by the competent Court.

61. It is pertinent to refer to this Registered Will, the relevant Clause of which read as under:

“The cash balance in joint accounts opened with the Banks and/or Post Office shall go and devolve upon the respective joint holder exclusively.”



62. The aforesaid Clause leaves little room for ambiguity. The intention of the Testator is manifest from the plain language used therein, namely, that the money lying in the joint Accounts were to devolve upon the surviving joint holders. The Defendant/Appellant and the Plaintiff/Respondent admittedly being the surviving joint holders in the concerned Bank Account, each became entitled to their respective share in the balance lying therein upon the demise of Late Sh. Prabhu Nath Singh.

63. It is further not in dispute that, as on the date of demise of Late Sh. Prabhu Nath Singh, the said joint Account had a balance of Rs.6,15,978.68/- In terms of the Will Ex.PW1/3, the Plaintiff became entitled to 50% thereof. Though the Plaintiff was entitled to a marginally higher amount, he restricted his claim in the Suit to Rs.3,07,990/- only. The learned Trial Court, therefore, rightly confined the decree to the amount actually claimed in the Suit.

64. The *principal contention* raised by the Appellant was that the Will had not been proved in accordance with Section 68 of the Indian Evidence Act, 1872. However, the said contention is wholly untenable. *Firstly*, for the simple reason that the execution and existence of the Will were never specifically denied by the Appellant. *Secondly*, and more importantly, the Will already stood duly proved in the Probate proceedings wherein both the Plaintiff, as well as the Appellant, were parties. *Once probate is granted, the Probate Judgment operates as a judgment in rem and the Will is not required to be proved afresh.* The learned Trial Court, therefore, rightly



observed that the requirement of fresh proof under Section 68 of the Evidence Act, did not survive in the facts of the present case.

65. The contention of the Appellant that the learned Trial Court granted a money decree merely on the basis of the Will is without merit. The decree was not founded solely upon the testamentary disposition, but upon the admitted existence of the joint Account, the amount lying therein around the time of demise of Late Sh. Prabhu Nath Singh and the evidence establishing that the Defendant had operated and withdrawn the said amount after his demise. The learned Trial Court, therefore, rightly determined the Plaintiff's enforceable monetary entitlement flowing from the terms of the Will read with the undisputed operation of the Account.

66. The Appellant had also sought to contend that, notwithstanding the grant of Probate, the contents of the Will were still required to be independently proved. This argument, too, is devoid of merit. The operative Clause relating to devolution of money in the joint Accounts is explicit and unambiguous and was never disputed by the Appellant. The Appellant neither challenged the interpretation of the said Clause nor disputed the existence of the amount lying in the Account at the relevant time. The dispute, therefore, was not with respect to interpretation of the Will, but only regarding the Plaintiff's enforceable entitlement flowing therefrom. Once the Will stood probated and the operative Clause remained undisputed, the learned Trial Court rightly proceeded to determine the monetary entitlement of the parties in accordance therewith. According to the explicit terms of the Will, the Plaintiff was entitled to 50% of the amount lying in the Account on the date of demise of Late Sh. Prabhu Nath Singh. The learned Trial Court,



therefore, rightly held that the Plaintiff was entitled to recover Rs.3,07,990/-, as claimed in the Suit.

67. However, during the pendency of the Suit, the Plaintiff expired and his wife along with his son, namely Mr. Abhay Singh, were substituted as his legal representatives *vide* Order dated 31.05.2022. Since the Defendant was also one of the legal heirs of the deceased Plaintiff and no Will excluding him had been pleaded or proved, the learned Trial Court, while exercising powers under Order VII Rule 7 CPC and taking note of the subsequent events, moulded the relief by holding that the substituted LRs, namely Smt. Gayatri Devi and Mr. Abhay Singh, would be entitled to 2/3rd share of the decretal amount, which came to Rs.2,05,326/-.

68. The *second challenge* raised by the Appellant, **pertains to limitation**. The principal submission advanced is that the present Suit was a simplicitor Suit for Recovery and, therefore, limitation ought to have commenced either from the date of demise of Late Sh. Prabhu Nath Singh or from the dates on which withdrawals were made from the joint Account.

69. This contention, however, overlooks the true nature of the claim set up by the Plaintiff. The Suit was founded upon the Plaintiff's entitlement under the Will in respect of monies lying in the joint Account jointly held with the Defendant and Late Sh. Prabhu Nath Singh. Mere existence of such entitlement under the Will did not, by itself, immediately give rise to a cause of action. The right to sue accrued only when the Plaintiff's entitlement was either denied, excluded or not honoured by the Defendant.

70. In the present case, the learned Trial Court has rightly observed that there is no evidence on record to show any earlier categorical refusal by the



Defendant. On the contrary, the Defendant himself asserted that the Plaintiff had never previously demanded any amount from him. It has also come in evidence that the Plaintiff was not aware of the details and operation of the concerned Account and obtained knowledge regarding the withdrawals only upon issuance of the duplicate Passbook on 10.09.2012. The Legal Notice thereafter came to be issued on 10.08.2013 and the Suit was instituted on 12.09.2013.

71. In these circumstances, the learned Trial Court rightly held that the cause of action could, at the earliest, be reckoned from the stage when the Plaintiff acquired knowledge regarding the withdrawals and asserted his entitlement in the money lying in the Account. Even otherwise, the Suit would still remain within limitation. As per Passbook Ex.PW1/4, an amount of Rs.3,80,000/- was withdrawn from the joint Account on 12.11.2010. Assuming the said date to constitute the first actionable instance of alleged misappropriation of the Plaintiff's share, the Suit instituted on 12.09.2013 would nevertheless fall within the prescribed period of limitation under Article 113 of the Limitation Act, 1963.

72. The reliance placed by the Appellant on Trojan & Co. Ltd. (supra) and Bachhaj Nahar (supra) is misplaced. The decree granted by the learned Trial Court is founded upon the pleadings, evidence and the express terms of the Will relied upon by the Plaintiff herself.

73. The contention regarding exclusion of testimony of DW-2, also does not assist the Appellant. DW-2 admittedly failed to appear for complete cross-examination and, therefore, her testimony could not have been relied upon. Further, no other evidence was produced by the Appellant/Defendant,



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to prove the Settlement. This alleged Settlement also, did not talk about the money lying in the joint Bank Account. Moreover, no documentary evidence was produced to establish the alleged family Settlement or relinquishment of rights by the Plaintiff. In any case, the alleged family Settlement, was not proved by any cogent documentary evidence.

74. This Court finds no illegality, perversity or material irregularity in the findings returned by the learned Trial Court warranting interference under Section 96 CPC.

75. There is no merit in the present Appeal, which is hereby dismissed.

76. Pending Applications, if any, stand disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 21, 2026

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