

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: CODE OF CIVIL PROCEDURE

CS(OS) No.3198 of 1988

Date of decision : January 18, 2008

SHRI PARKASH CHANDER BHALLA

Through:

PLAINTIFF

**Mr. Sujoy Chander Kumar,
Advocate**

Vs.

SHRI SUDESH CHANDER BHALLA and ORS.....

Through:

DEFENDANTS

**Mr. V.K. Makhija, Sr. Advocate
with Mr. Akshay Makhija, Advocate
for LRs of Defendant No.1
Mr. D.N.Goburdhan Advocate for
Defendant no.2 Ms. Shubhangi Tuli,
Advocate for defendant No.3.
Mr. Vikas Chopra, Advocate for
defendant No.4.**

CS(OS) No.503 of 1990

SHRI PARKASH CHANDER BHALLA

Through:

PLAINTIFF

**Mr. Sujoy Chander Kumar,
Advocate**

Vs.

SHRI SUDESH CHANDER BHALLA and ORS

Through:

DEFENDANTS

**Mr. V.K. Makhija, Sr. Advocate
with Mr. Akshay Makhija, Advocate
for LRs of Defendant No.1 Mr.
D.N.Goburdhan Advocate for
Defendant no.2 Ms. Shubhangi Tuli,
Advocate for defendant No.3.Mr.**

Vikas Chopra, Advocate for
defendant No.4.

ANIL KUMAR, J.

1. This judgment will dispose of plaintiffs suit, CS (OS) 3198 of 1998 for partition of properties of Late Shri Hans Raj Bhalla, Property bearing No.22, Park Area, Karol Bagh, New Delhi and a plot of land bearing Khasra No.440 (measuring 563.59 square yards) situated at the main road, opposite plot No.T-3, Industrial Area, Bahadurgarh, District Rohtak, Haryana and the moveable properties of late Shri Hans Raj Bhalla stipulated in the schedule annexed with the plaint. After filing of the suit, an award was given in respect of some of his properties which became final and therefore, suit remains for the partition of the Property bearing No.22, Park Area, Karol Bagh, New Delhi and the moveable properties. Suit no. CS(OS) 503 of 1990 is a suit for permanent injunction seeking a restrain against Sh.Suresh Chand Bhalla, defendant No.1 that he and his family members be restrained from interfering with the peaceful possession of the plaintiff in respect of two rooms, bath on the ground floor and from making any changes/construction/addition/alterations in the suit premises. CS(OS) 3198 of 1988

2. This is the suit for partition of the properties of Late Shri Hans Raj Bhalla, Property bearing No.22, Park Area, Karol Bagh, New Delhi and a plot of land bearing Khasra No.440 (measuring 563.59 square yards) situated at the main road, opposite plot No.T-3, Industrial Area, Bahadurgarh, District Rohtak, Haryana and the moveable properties of late Shri Hans Raj Bhalla stipulated in the schedule annexed with the plaint. After filing of the suit, an award was given in respect of some of his properties which has become final and therefore, this suit remains for the partition of the Property bearing No.22, Park Area, Karol Bagh, New Delhi and moveable properties. The defendant no.2 has also sought partition of the property at Anand Niketan which is in the name of defendant no.4 contending that it is a joint family property which was acquired from the funds of HUF and therefore, has sought partition of said property also.

3. The plaintiff and defendants No.1 to 4 are brothers, sons of late Shri Hans Raj Bhalla. The defendants No.5 to 8 are the sisters of the plaintiff and defendants No.1 to 4. Shri Hans Raj Bhalla, father of the plaintiff and defendants, died on 11th February, 1977. During his life time he executed a will on 25th April 1973 whereby he gave life interest in his property to his wife, Smt. Sita Devi Bhalla, who was allowed to receive rent with profits of the said immovable properties during her life time.

4. The defendant no.5, Smt. Raj Vohra refused to accept the summon of the suit and she was proceeded ex-parte on 31st January, 1989 after plaint dated 14th December, 1988 was filed and summons were issued to the defendants on 21st December, 1988. Defendant nos. 7 and 8, Mrs. Kanwal Khanna and Smt. Dolly Bhatia respectively were proceeded ex-parte on 9th February, 1989 and Defendant no.6, Smt. Krishna Talwar, was proceeded ex-parte on 7th March, 1990. The other defendants have contested the suit.

5. Plaintiff averred that Smt. Sita Devi Bhalla died on 15th April, 1988 and the rights in the immovable properties, 22, Park Area, Karol Bagh, New Delhi devolved upon the plaintiff and defendants No.1 to 4 in equal shares. Plaintiff pleaded that in April 1987, defendant No.1 taking advantage of old age and illness of Smt. Sita Devi tried to dispossess the plaintiff from the portion in possession of the plaintiff, necessitating filing a suit against defendant No.1 seeking restraint against him from dispossessing the plaintiff. In the said suit no. 503 of 1990 titled Shri Prakash Chander Bhalla Vs Shri Sudesh Chander Bhalla and ors. filed by the plaintiff, a

temporary injunction was granted and ultimately after the death of Smt. Sita Devi Bhalla, plaintiff applied for possession of the room, however, it was ordered that the plaintiff will lock the room and deposit the keys in the Court which plaintiff contended, that he did.

6. Another contention of the plaintiff is that certain disputes which had also arisen between the parties regarding the joint business were referred to arbitration of Mr. P.N. Khanna, a retired Judge of the High Court of Delhi who is also in common relation of the parties. The arbitrator made an interim award on 25th December, 1984 and a final award was made on 24th April, 1986. The award was challenged by defendants No.1,3 and 4 who filed objections and the plaintiff without prejudice to his rights, sought partition of the properties, viz., No.22, Park Area, Karol Bagh, New Delhi and the plot at Bahadurgarh.

7. The suit has been contested by the defendants. Defendants No.1, 3 and 4 contended that the suit is not maintainable as the defendants No.1 to 4 are in joint possession and the plaintiff is in illegal, forcible occupation of a portion of the property and the possession of defendants 1 to 4 is not conjoint with the plaintiff and the plaintiff is a trespasser in the portion of the property No.22, Park Area, Karol Bagh, New Delhi and the plot of land in Khasra No.440 measuring 553.59 sq.yards located at Bahadurgarh is in exclusive possession of defendants No.1,3 and 4 and therefore, the plaintiff cannot seek partition without claiming possession thereof and paying court fee on the market value thereof.

8. The defendant No.2 contested the suit by filing a written statement and contending that the suit is for partial partition of the joint family properties and thus not maintainable. The said defendant stated that he is a co-owner of House No.22, Park Area, Karol Bagh, New Delhi which was purchased from the funds of partnership of M/s. H.R. Bhalla and Sons and consequently late Shri H.R. Bhalla and defendant No.2 were the co-owners. He pleaded that Shri H.R. Bhalla, deceased, had no right to devise the entire property by his alleged will. Similarly regarding property at Bahadurgarh, defendant No.2 contended that since that was assessed as a joint family property, therefore, deceased Shri H.R. Bhalla did not have any right to alienate, gift, bequeath, sell or dispose of the said property. The defendant No.2 stated that partnership firm carried on the business and the defendant No.2 was its partner when he was 22 years old and as other defendants were not partners in the partnership carried on between the defendant No.2 and late Shri H.R. Bhalla, thus the plaintiff does not have such rights in the property as claimed by him and he is not entitled to claim partition in respect of entire property. It has been pleaded that the plaintiff can claim partition of only half property which was owned by Late Shri H.R. Bhalla. Defendant No.2 sought inclusion of property No.C-66, Anand Niketan, New Delhi in schedule of properties of late Shri H.R. Bhalla to be partitioned alleging that the said property at Anand Niketan was purchased out of joint family funds and bears the character of joint Hindu family and after the demise of Shri H.R. Bhalla and Smt. Sita Devi Bhalla, the said property is also liable to be partitioned. Regarding defendant No.4, it was averred that the said defendant had shifted to a rented premises as a Managing Director of M/s. Mechanical Movement Pvt. Ltd and the said company had obtained a rent-free accommodation for Shri N.C. Bhalla, defendant No.4 at C-66, Anand Niketan, New Delhi. The rights of defendant No.4 on any portion of property bearing No.22, Park Area, Karol Bagh, New Delhi were denied by defendant No.2 on the ground that after the demise of Shri H.R. Bhalla in February, 1977, the defendant No.4 has not been in possession and occupation and has not exercised any of the incidents of ownership with regard to the said house.

9. The plaintiff filed replication controverting the averments made by defendant Nos.1, 3 and 4 and defendant No.2. Defendant Nos.1, 3, 4 also filed reply to the written statement filed on

behalf of defendant No.2 and controverted the allegations made by defendant No.2. It was categorically contended that property No.C-66, Anand Niketan, New Delhi-110021 is not a joint family property and consequently partition cannot be sought by the parties in respect of the said property. 10. On the pleadings of the parties, the following issues were framed: 1.Whether the suit is not maintainable for the reasons stated in paragraphs 14, 20 and 21 of the Written Statement of defendants 1, 3 and 4 and Preliminary Objection No. 1 and 2 of written statement of defendant No.2 2.Whether the plaintiff cannot reserve his right to claim partition of the Property No.53/1, Original Road, D.B.Gupta Road, New Delhi 3.Whether the defendant No.2 was the co-owner of House No.22, Park Area, Karol Bagh, New Delhi alongwith late Shri H.R. Bhalla 4.Whether defendant No.4 has no right, title or interest in premises No.22, Park Area, Karol Bagh, New Delhi 5.Whether H.No.C-66, Anand Niketan, New Delhi is owned by joint family consisting of plaintiff and defendants 1 to 4 6.Whether H.R.Bhalla, deceased, had no right to make a Will in respect of property bearing Khasra No. 440, situated on the main Road opposite Plot No. T/3, Industrial Area, Bahadurgarh, Distt. Rohtak, Haryana 7.Whether the said property bearing Khasra No. 440 situated on the main road, opposite Plot No. T/3, Industrial Area, Bahadur Garh, Distt. Rohtak, belonged to joint family, as alleged by defendant No.2 in Preliminary Objection No.2 of his written Statement 8.Whether the plaintiff has removed/taken away the House hold effects which fell to his share 9.Whether proper court fee has not been paid

10. What will be the respective share of the parties in the suit property 11.Relief.

11. That during the pendency of the suit, an award in respect of some of the properties of Late Shri H.R.Bhalla was given and was made rule of the court on 23rd February, 1995 passed in Suit No.1091A/1986. The award dealt with three companies: 1) M/s. H.R. Bhalla and Sons Pvt. Ltd., 2) Selfast Air System Pvt. Ltd and 3) Mechanical Movement Pvt. Ltd. The said award also dealt with property at T-3, Industrial Area, Bahadur Garh and thus the disputes have remained only in respect of property No.22, Park Area, Karol Bagh, New Delhi and C-66, Anand Niketan, New Delhi, which property according to the defendant no.2 is also joint family property and is liable to be partitioned.

12. Issues Nos. 2, 6 and 7:- 2. Whether the plaintiff cannot reserve his right to claim partition of the Property No.53/1, Original Road, D.B.Gupta Road, New Delhi 6. Whether H.R.Bhalla, deceased, had no right to make a Will in respect of property bearing Khasra No. 440, situated on the main Road opposite Plot No. T/3, Industrial Area, Bahadurgarh, Distt. Rohtak, Haryana 7. Whether the said property bearing Khasra No. 440 situated on the main road, opposite Plot No. T/3, Industrial Area, Bahadur Garh, Distt. Rohtak, belonged to joint family, as alleged by defendant No.2 in Preliminary Objection No.2 of his written Statement

12.1 These issues pertain to other properties which were the subject matter of reference to Shri P.N. Khanna, Arbitrator. An award dated 24th April, 1986 was given by Shri P.N. Khanna, sole Arbitrator. The award was made Rule of the Court vide judgment dated 23rd February, 1995 passed in CS(OS) NO.1091A/1986. The award which has been made Rule of the Court is binding between the parties and nothing has been produced and proved to the contrary.

12.2. Shri Ramesh Chander Bhalla, defendant No.2, has admitted in his cross-examination by defendant No.3 that arbitration proceedings were initiated before Justice P.N. Khanna who rendered an award awarding property situated at 53/1, Desh Bandhu Gupta Road to Shri N.C. Bhalla, Shri S.C. Bhalla and Shri A.C. Bhalla. He also admitted that the award had been made Rule of the Court. Similarly, defendant No.3, Avinash Chander Bhalla, in his cross- examination

conducted on 13th January, 1998 by defendant No.2 admitted that the Original Road property was awarded to defendants No.1, 3 and 4. Defendant No.4 in his cross-examination by the counsel for defendant No.2 on 18th March, 1998 stated that Shri P.C. Bhalla and Shri R.C. Bhalla, plaintiff and defendant No.2 respectively did not give up their claims in the Original Road properties, however, they did not get rights in the property on account of award given by Mr. Justice P.N. Khanna (Retd.).

12.3. These issues also pertain to property at Bahadurgarh, Rohtak. Shri Ramesh Chander Bhalla, defendant No.2, in his cross-examination on 4th November 1997 by the plaintiff admitted that the property at Bahadurgarh was sold and the sale proceeds were shared by all the brothers and that had put an end to the transaction in respect of Bahadurgarh property. Shri Avinash Chander Bhalla, defendant No.3, in his statement recorded on 12th January, 1998 admitted that the property at Bahadurgarh was mutated in the name of all the brothers and was subsequently disposed of and the sale proceeds were shared equally between all the five brothers. Similarly, defendant No.4, Shri Naresh Chander Bhalla also admitted in his statement recorded on 17th December, 1998 that after the demise of Shri Hans Raj Bhalla, his father, property situated at Bahadurgarh was mutated in the name of all the sons of late Shri Hans Raj Bhalla and after his demise it was sold to an outsider and the sale proceeds were divided equally amongst the sons of late Shri Hans Raj Bhalla. Shri Subhash Chander Bhalla, defendant No.1 has also made similar statement. In his statement recorded on 24th March, 1998 it was admitted that the property at Bahadurgarh was divided into five equal shares which was sold and the sale proceeds were distributed equally between the five brothers. He was categorical that none of the brothers objected to distribution of the sale proceeds equally between them and his statement has not been challenged by any of the parties. The statements made by the defendants and the plaintiff in respect of these properties, at Original Road and Bahadurgarh have not been refuted and challenged. Defendant No.2 who has raised preliminary objection that the present suit for partition is not maintainable as it does not include Original Road (Desh Bandhu Gupta Road property) and Bahadurgarh property, therefore, does not survive as the Original Road property has been divided between the legal heirs of late Shri H.R. Bhalla in terms of award dated 24th April, 1986 which has been made Rule of the Court and the property at Bahadurgarh has also been sold after mutation and therefore, issue No.2 is decided in favor of the plaintiff since the property No.53/1, Original Road (Desh Bandhu Gupta Road) has also been partitioned and awarded in terms of award dated 24th April, 1986 which award was made rule of the Court on 23rd February, 1995. Since this property has already been partitioned in view of the award given in respect of this property which was not disputed by anyone, therefore, the plaintiff was entitled to reserve his right to claim share to this suit property and not include the same in the present suit for partition and the issue no.2 is decided accordingly. The property at Bahadurgarh was also mutated in the name of five sons of late Shri H.R. Bhalla and the property was sold to an outsider and the sale proceeds distributed between all the sons of late Shri H.R. Bhalla. Therefore the issues No.6 and 7 are accordingly decided holding that Shri H.R.Bhalla had the right to make a will in respect of property bearing Khasra no. 440 situated on the main Road opposite plot on T/3, Industrial Area, Bahadurgarh, Distt. Rohtak, Haryana and it was not the property of joint family. The defendant no.2 in his cross examination recorded on 18th November, 1997 had admitted that he did not challenge the will of his father and he and all the brothers had admitted and accepted the will. The parties have admitted that the said property has been sold and sale proceed distributed among the plaintiff and defendant nos. 1 to 4 and this transaction has come to end, therefore, these issues are decided accordingly.

13. Issue No.3 3. Whether the defendant No.2 was the co-owner of House No.22, Park Area, Karol Bagh, New Delhi alongwith late Shri H.R. Bhalla

13.1 This issues pertain to the property No.22, Park Area, Karol Bagh, New Delhi. Defendant No.2 has claimed that he was the co-owner of said house along with late Shri H.R. Bhalla as the same was purchased from the funds of the partnership business of M/s H.R.Bhalla and Sons. The defendant no.2 contended that the partnership firm in the name and style of M/s H.R.Bhalla and Sons was started by deceased father and the defendant no.2 in 1947 and the plot was purchased at that time and thereafter, out of the funds of the partnership firm, the construction was done between 1952 and 1954 out of the joint funds. The Defendant no.2 also alleged that at the time of formation of partnership business, the plaintiff was only 6 years old and the defendant nos. 1, 3 and 4 were aged 13 years, 8 years and 15 years respectively who were not partners and did not have any share in the partnership business and therefore, the defendant no.2 has 50% share and deceased Shri H.R.Bhalla had only 50% share in the said property and the plaintiff cannot claim 1/5th share in the entire property. These allegations and pleas are denied by the plaintiff and defendant nos. 1,3 and 4.

13.2. Whether this property was acquired from the funds of partnership business and was also constructed from the funds of the partnership business. The defendant no.2 stated that the partnership started in 1947 though it was reduced into writing in 1948. This plea that there was an oral partnership between the deceased father and defendant no.2 was not taken in the written statement. An objection has also been taken by other parties to this plea of defendant no.2. In absence of such a plea in the pleadings that there was an oral partnership, the evidence of the defendant no.2 in this regard should not be considered. The learned counsel for defendant no.2, Mr. Goburdhan, is unable to point out as to how the oral evidence of defendant no.2 can be considered regarding this. Besides the oral testimony of defendant no.2 that there was an oral partnership between the two in 1947, there is no other evidence to show that an oral partnership existed when the plot of land for the said property was acquired in 1947. No evidence has been led by the defendant no.2 to show that partnership business was carried on 1947. It is admitted by the defendant no.2 that the transfer deed of the Park area property is in the name of the deceased father. He also admitted that he never addressed any letter in writing that the property be mutated showing him to be the owner of one half portion. The said defendant no.2 is an income tax payee, However, he has not declared himself to be the owner of one half portion of said property. He also admitted that there are no documents to show that the construction of Park area property was carried out from partnership funds. He stated that he had opened a branch of the partnership firm in Lucknow and he had gone there in 1950 and from there he had moved to Kanpur where he stayed till 1956. The property was got mutated in the name of plaintiff and defendant nos. 1 to 4 on the basis of will of 1973 of Late Shri H.R.Bhalla by addressing a letter to Tehsildar by the defendant no.2 and other sons of Late Shri Hans Raj Bhalla. The defendant no.2 did not indicate in the letter to Tehsildar that the will of 1973 is valid only for half share in the property as he is the owner of other half share of the property. The property was purchased in 1947 and allegedly constructed in 1952, the defendant no.2 never made any effort to get the property mutated in his name nor he claimed to be the owner of half of the property before filing of the present suit. This fact that the property was got mutated in 1977 by the defendant no.2 after the death of the father on the basis of will of 1973 has not been challenged by the defendant no.2. The PW 2 Mr. Rajiv Khanna, Patwari of DDA deposed that the property is mutated in the names of the plaintiff and defendant nos. 1 to 4 in equal 1/5th share each. The defendant no.2 also admitted that all the brothers including him had accepted the provisions of the will. He also admitted in his cross examination recorded on 18th November 1997 , that he did not challenge the will of the father. He also admitted that he did not claim one half share in writing from his other brothers in this house, also known as Bhalla House. However the said witness, defendant no.2 in his cross examination recorded on 15th December, 1997 took a different stand and

showed his inability to depose that the property is mutated in the name of five sons of Late Shri H.R.Bhalla. In his cross examination recorded on 16th December, 1997, the Defendant no.2 deposed contrary to his earlier statement that the said property was partnership property as the land was allegedly acquired by the partnership in 1947 when there was no written partnership but on the basis of oral partnership and it was constructed by the partnership in 1952, by stating that the said property was not the property of the partnership but the individual/personal property of the defendant no.2 and his father. The said defendant also deposed in his cross examination by Defendant no.1 on 16th December, 1997 that he had been collecting rent from the tenants of the said property. He also deposed that his mother was also collecting rent from the tenants of the said property. The defendant no.3 in his cross examination by defendant no.2 on 13th January, 1998 denied the suggestion that the property was purchased and constructed from the funds of the partnership business which suggestion was given by the counsel for the defendant no.2 contrary to the deposition of the defendant no.2 that the said property was the personal property of defendant no.2 and his father. Another suggestion contrary to the pleas of the defendant no.2 was given in the cross examination of defendant no.3 on 13th January, 1998 that the intention of Late Shri Hans Raj Bhalla was to give the said property to the defendant no.3, defendant no.2 and defendant no.1. If the property is claimed by the defendant no.2 to be his property, how, could he accept the alleged desire of his father to give property according to his desire. This is not the case of the defendant no.2 that though he was the owner of half share in the property but he had agreed for distribution of the property according to the desire of his old father. The defendant no.3 denied the suggestion of the counsel for the defendant no.2 that defendant no.4 had abandoned the said house.

13.3. Though the defendant no.2 deposed on 18th November, 1997 in his cross examination that the `Bhalla House was constructed from partnership funds but he admitted that he does not have any documents to show that the construction was done from the funds of the partnership business carried on by the defendant no.2 with his father. Perusal of the pleas of the defendant no.2 and his deposition, it is apparent that there is substantial variation in the pleas and evidence and deposition recorded on different dates. The categorical plea of the defendant no.2 was that the said property was the partnership property of the H.R.Bhalla and Sons in which he and his father were the partners and the property was acquired from the funds of the partnership and constructed from the funds of the partnership. However, in the evidence, first the stand of the defendant no.2 was that it was a partnership property but later on he deposed that it was the individual property of the defendant no.2 and his father. Since the partnership started in 1948 but the land of the property was purchased in 1947, therefore, the defendant no.2 took the stand that there was an oral partnership. Nothing has been shown nor any evidence produced to show that there was partnership business between the defendant no.2 and his father in 1947. So this cannot be believed that the land for the property was acquired by the partnership from the funds of the partnership. The plea and evidence of the defendant no.2 are divergent. The plea was that he is the co-owner of house number 22, Park Area, Karol Bagh, New Delhi which was purchased from the partnership business of M/s H.R.Bhalla and sons. From the documents filed by the defendant no.2 it is not established that the property was purchased from the funds of the said partnership firm.

13.4. Some of the documents were filed by the defendant no.2 after the evidence of the plaintiff was recorded. These documents which are mainly the annual returns; accounts for different years of M/s H.R.Bhalla and Sons Pvt. Ltd; unsigned copies of resolution of board of Directors; Original audit report of M/s Mechanical Movements Pvt. Ltd.; copy of G.P.A allegedly executed by H.R.Bhalla in favor of defendant no.2 and copies of some of the letters, were produced before the Learned Local Commissioner on 6th June, 1998 who was appointed to record the evidence of

the parties much after framing of issues on 13th August, 1991. The documents were not produced with the permission of the Court. These documents have been produced after the evidence of the plaintiff was concluded and in the circumstances the plaintiff did not have any opportunity to rebut the alleged documents which have not even been proved by the defendant no.2. The objections were taken on behalf of the plaintiff and other defendants when the evidence was led by the defendant no.2 in respect of these documents. In the circumstances these documents should not be considered as consideration of these will be in violation of principle of natural justice. Mere production of a document is not the proof of the document. The learned counsel for the plaintiff has relied on (1971) 2 SCC 617, M/s Bareilly Electricity Supply Co Ltd. Vs The Workmen and ors to contend that the documents which the plaintiff could not rebut in his deposition could not be relied on as the same were produced after the conclusion of the evidence of the plaintiff and without the permission of the Court and has also not been proved in accordance with law. The Supreme Court in M/s Bareilly Electricity Supply Co. Ltd at page 629 in para 14 had held as under: But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the appellant produced the balance-sheet and profit and loss account of the company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order 19 of the Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except insofar as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection insofar as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt. In the circumstances, these documents produced by the defendant no.2 cannot be taken into consideration in support of the pleas of the defendant no.2.

13.5. Nothing has been produced by the defendant no.2 to show that the property was constructed from the funds of the partnership business. The defendant no.2 has produced some documents of H.R.Bhalla and Sons Pvt. Ltd. Most of the documents produced by the defendant no.2 have not been proved. Mere production of the documents is not the proof of the documents. This is not disputed by the defendant no.2 that the registered sale deed was in the name of his father. From the documents produced of H.R.Bhalla and Sons Pvt. Ltd. some of which have been exhibited, it cannot be inferred that it was the property of the firm, either purchased from the funds of the partnership business or constructed from the funds of partnership business and it became the property of the partnership firm.

13.6. If the property was in the name of the deceased Shri H.R.Bhalla father of the plaintiff and defendant no.2, can the defendant no.2 be allowed to raise the plea that he is the benami owner

of the half portion of the property. Though the plea of the defendant no.2 was that half of the property is owned by him because he was a partner of 50% share in H.R.Bhalla and sons, however, in his evidence he has deposed that he and his father owned the fifty percent property each. Can the defendant no.2 be allowed to raise the plea that he is benami owner of the 50% share in the property bearing no.22 Park Area, Karol Bagh, New Delhi

13.7. The plaint for this suit for partition is dated 14th December, 1988 and was registered on 21st December, 1988. Benami Transactions (Prohibition) Act, 1988 came into force on 5th September, 1988 after Benami Transaction (Prohibition of Right to Recovery) Ordinance, 1988 came into force on 19th May, 1988. Section 4 of the said act contemplates that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. Section 4 of the said Act is as under: 4. Prohibition of the right to recover property held benami:- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. (2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. (3) Nothing in this section shall apply,-- (a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

13.8. The learned counsel for the parties other than defendant no.2 have contended that in view of the provision of the said act, the defendant no.2 cannot be allowed to plead that he is benami owner of the 50% share in the property. The learned counsel has relied on (2006) 6 SCC 526, Probodh Chandra Ghosh Vs Urmila Dassi and anr.; (2005) 6 SCC 441, G.Mahalingappa Vs. G.M.Savitha and (1995) 2 SCC 630, r.Rajagopal Reddy (dead) by Lrs. and ors Vs Padmini Chandrasekharan (dead) By Lrs. In Probodh Chandra Ghosh (supra) it was held by the Supreme Court that section 4 of the Benami Transaction (Prohibition) Act, 1988 covers past transaction between the real owner and benamidar. The transaction in other words may be of the past but the suit, claim or action would not lie subsequent to coming into force of the Act. The present suit has been filed after coming into force of the said Act. Consequently the defendant no.2 cannot be allowed to raise the plea that he is Benami owner of 50% of 22 Park Area, Karol Bagh, New Delhi. In G. Mahalingappa (supra) it was held by the Supreme Court that section 4(2) is retrospective to the extent that after its commencement the bar on the plea of the defense postulated therein would apply even in respect of a past benami transaction. The question before the Apex Court was whether under section 4(2) of the Act, defense could be allowed to be raised on any right in respect of any property held benami. The Apex Court on page 448 had held as under: 18. In para 11 of the said decision of this Court, the Supreme Court further observed: (SCC p. 640) On the contrary, clear legislative intention is seen from the words no such claim, suit or action shall lie, meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1). (Underlining * is ours) 19. In the same paragraph the Supreme Court observed: (SCC p. 641) With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in

connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive. (emphasis supplied) 20. In our view, similar is the position in law on the question of retrospectivity of Section 4(2) of the Act. 21. Finally, this Court in the aforesaid decision held that the decision in *Mithilesh Kumari v. Prem Behari Khare* 1 erred in taking the view that under Section 4(2), in all suits filed by persons in whose names properties are held no defence can be allowed at any future stage of the proceedings that the properties are held benami cannot be sustained. It was also held that Section 4(2) will have a limited operation even in cases of pending suits after Section 4(2) had come into force, if such defences are not already allowed. The decision in *R. Rajagopal Reddy v. Padmini Chandrasekharan* 2 which overruled the decision of a two-Judge Bench in the case of *Mithilesh Kumari v. Prem Behari Khare* 1 was also approved by this Court in the cases of *Probodh Chandra Ghosh v. Urmila Dassi* 3 and *C. Gangacharan v. C. Narayanan* 4. In view of the aforesaid, this question is, therefore, no longer res integra.

13.9. The Supreme Court in *R. Rajagopal Reddy* (supra) at page 641 had held as under: 12. So far as Section 4(2) is concerned, all that is provided is that if a suit is filed by a plaintiff who claims to be the owner of the property under the document in his favour and holds the property in his name, once Section 4(2) applies, no defence will be permitted or allowed in any such suit, claim or action by or on behalf of a person claiming to be the real owner of such property held benami. The disallowing of such a defence which earlier was available, itself suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right of the defendant. Such a provision also cannot be said to be retrospective or retroactive by necessary implication. It is also pertinent to note that Section 4(2) does not expressly seek to apply retrospectively. So far as such a suit which is covered by the sweep of Section 4(2) is concerned, the prohibition of Section 4(1) cannot apply to it as it is not a claim or action filed by the plaintiff to enforce right in respect of any property held benami. On the contrary, it is a suit, claim or action flowing from the sale deed or title deed in the name of the plaintiff. Even though such a suit might have been filed prior to 19-5-1988, if before the stage of filing of defence by the real owner is reached, Section 4(2) becomes operative from 19-5-1988, then such a defence, as laid down by Section 4(2) will not be allowed to such a defendant. However, that would not mean that Section 4(1) and Section 4(2) only on that score can be treated to be impliedly retrospective so as to cover all the pending litigations in connection with enforcement of such rights of real owners who are parties to benami transactions entered into prior to the coming into operation of the Act and specially Section 4 thereof. It is also pertinent to note that Section 4(2) enjoins that no such defence shall be allowed in any claim, suit or action by or on behalf of a person claiming to be the real owner of such property. That is to say no such defence shall be allowed for the first time after coming into operation of Section 4(2). If such a defence is already allowed in a pending suit prior to the coming into operation of Section 4(2), enabling an issue to be raised on such a defence, then the Court is bound to decide the issue arising from such an already allowed defence as at the relevant time when such defence was allowed Section 4(2) was out of the picture.

13.10. The defendant no.2 has raised the plea that he is benami owner of the 50% share in the said property in his written statement which is dated 1st November, 1989, much after coming into force of the Benami Transaction (Prohibition) Act, 1988. Therefore, in the present facts and circumstances, he cannot be allowed to raise the plea that he had been benami owner of the half share in the property. From the evidence led by the defendant no.2 he has also failed to prove that he had 50% share in the said immovable property. Issue no.3 is thus decided accordingly.

14. Issue no.5, 4 and 1 1. Whether the suit is not maintainable for the reasons stated in paragraphs 14, 20 and 21 of the Written Statement of defendants 1, 3 and 4 and Preliminary Objection No. 1 and 2 of written statement of defendant No.2 4. Whether defendant No.4 has no right, title or interest in premises No.22, Park Area, Karol Bagh, New Delhi 5. Whether H.No.C-66, Anand Niketan, New Delhi is owned by joint family consisting of plaintiff and defendants 1 to 4

14.1. The defendant No.2 pleaded that the House No.C-66, Anand Niketan, New Delhi, was purchased out of the joint family funds and bears the character of property owned jointly by the plaintiff and all the defendants, though it was purchased in the name of Mr.S.C. Bhalla, defendant No.4, from the funds contributed by late Shri H.L. Bhalla, Smt.Sitawati Bhalla, Shri P.C. Bhalla, plaintiff, M/s.H.R.Bhalla and Sons which was incorporated as a private limited company in 1956 with the plaintiff and defendant Nos.1 to 4 as its Directors and from the funds of M/s. Mechanical Movements Pvt. Ltd. which was in a sense a joint family concern of the plaintiff and defendants No.1 to 4 duly incorporated in 1964. The defendant No.2 also contended that since defendant No.4 was not residing at 22, Park Area, Karol Bagh, New Delhi, a rent free accommodation was obtained at C-66, Anand Niketan, New Delhi, where the defendant No.4 resided as Managing Director of M/s. Mechanical Movements Pvt. Ltd. and thereafter the said premises was purchased out of the joint funds of all the family members and, therefore, the said property is also liable to be partitioned.

14.2. The defendant No.2 in his evidence, however, deposed that the property C-66, Anand Niketan, was purchased for a price of Rs.2.00 lakhs and defendant No.4 had arranged a loan from LIC on his own initiative and thereafter the family business had helped him for financing the property and had arranged for the repayment of loan of LIC by paying a monthly sum of Rs.1,000/-. According to his testimony, the loan of LIC was repaid within a period of 10 years or perhaps earlier. According to him before defendant No.4 shifted to C- 66, Anand Niketan, he was living in a rented accommodation at Rajinder Nagar @ Rs.400/- per month which rent was also paid from the joint business. In the cross-examination of defendant No.2 on 1st March, 1997, he, however, deposed that the amount was advanced to defendant No.4 for purchasing the property during the period when family was under the great financial strain and hardship and defendant No.4 had given categorical assurance to Shri H.R. Bhalla and his mother and other family members that as and when any adjustment of the property will take place, he would have no right, lien or claim any share particularly in the property known as Bhalla House, 22 Park Area, Karol Bagh, New Delhi.

14.3. In the cross-examination of defendant No.2 recorded on 15th December, 2007 by the counsel for defendant No.3, he deposed that he had himself made substantial contributions for the purchase of property No/C-66, Anand Niketan, New Delhi, and contributions were made by defendant No.2 through the funds of the two companies which were under his management, i.e., H.R. Bhalla and Sons Pvt. Ltd. and M/s. Mechanical Movements Pvt. Ltd. He also admitted that defendant No.4 had raised a loan from LIC for purchasing the suit property. He also admitted that the property No.C-66, Anand Niketan is in the name of defendant No.4.

14.4. The defendant No.4, however, in his statement, deposed that Anand Niketan property was purchased by him from his own resources and the loan raised by him and the certified copy of the conveyance deed was proved as Ex- DW4/1. He deposed that he had created a registered mortgage in respect of this property in favor of LIC to obtain a loan of Rs.90,000/- and a certified copy of mortgage deed dated 15th December, 1976 was proved and exhibited as Ex.DW4/2. The defendant No.4, in his cross-examination recorded on 17th March, 1998, denied the suggestion that the rent of the property at Rajinder Nagar House was paid by the company and he deposed that he himself was paying the rent. He also deposed that he was getting the salary and perks as a Managing Director of M/s. Mechanical Movements Pvt. Ltd. He denied the correctness of alleged resolution of M/s. Mechanical Movements Pvt. Ltd. Dated 30th November, 1967. He also denied that the rent of Anand Niketan house was paid by the company and he deposed that he paid the rent of the said premises and he was a tenant in his personal capacity. He also denied the suggestion that the rent was reimbursed by M/s. Mechanical Movements Pvt. Ltd. to him and stated that he was getting the salary and perks being the Managing Director. Regarding Rs.1,000/- per month which were shown as expenditure for the defendant no.4 as alleged in the balance sheet, it was stated to be the part of his salary and perks. The said witness also deposed that he paid all the premiums, interests and installments personally though he declined to produce bank account pass book pertaining to that period on the ground that he did not remember in which bank he had account at the time. He also denied the suggestion that the balance sheet of the company, M/s. Mechanical Movements Pvt. Ltd. reflects that the repayment of installments for the loan and premium on the policies of LIC was paid by the said company. The defendant No.4 was shown an audit report dated 16th October, 1984 where he admitted his signatures and the signatures of others which was exhibited as Ex-D4/1. The production of the said document and its exhibition was objected to by other counsel as the said document was filed by defendant No.2 without the leave of the court and because the defendant No.4 and the plaintiff and other defendants other than defendant No.2 did not get a chance to rebut the said documents. Two annual reports and account for the year ending 31st December, 1979 and 31st December, 1982 were marked as D4/X and D4/X1 which were, however, objected to. Ex.P15 is the copy of the only return of M/s H.R. Bhalla and Sons which, however, does not reflect anything to show that any amount was advanced to defendant No.4 or that amount was paid by the said firm to LIC for repayment of the loan taken by defendant No.4.

14.5. The defendant No.2 also produced a photocopy of the letter alleged to have been written by Shri H.R. Bhalla to defendant No.4 stipulating that he will have no claim in respect of Park Area property. The said document was not admitted by the defendant No.4 and he denied the suggestion that the Anand Niketan property belongs to the whole family and is not his personal property. Shri Sudesh Chander Bhalla, defendant no.1, in his cross-examination on 2nd April, 1998 denied the suggestion that he had contributed for the purchase of Anand Niketan property. The said defendant did not admit documents marked D4/X2, document marked as D4/X4 and D4/X3. He also showed his ignorance about the defendant No.4 receiving any family assistance by way of rent on his shifting to Anand Niketan property and he also denied that Anand Niketan property was purchased from the funds of partnership business of M/s H.R. Bhalla and Sons.

14.6. The alleged photocopy of the letter alleged to be written by Shri H.R.Bhalla to defendant no.4 has not been proved. The defendant no.2 in the facts and circumstances is unable to prove that the defendant no.4 had given up his right in 22 Park Area property on account of Anand Niketan property purchased in the name of defendant no.4 from the funds of joint family. The basis of the plea of the defendant No.2 that defendant No.4. had no right in House No.22, Park Area, Karol Bagh, New Delhi, seems to be based on the 17th January, 1997 letter which was

marked as D4/X4 allegedly written by Shri H.R. Bhalla to defendant No.4 incorporating the alleged assurance alleged to have been given by defendant No.4 to Shri H.R. Bhalla that he will not claim any rights in the residential House Bhalla House 22 Park Area, Karol Bagh, New Delhi. The alleged letter alleged to be signed by Shri H.R. Bhalla also seems to have a stipulation that the loan raised by the defendant No.4 from LIC for the purchase of House No.C-66, Anand Niketan, by defendant No.4 was reimbursed by way of monthly rental of house from the company, M/s. Mechanical Movements Pvt. Ltd., to phase repayment of interest and loan.

14.7. The letter was not produced by defendant No.2 before framing of issues. The alleged letter was produced after a part of the evidence had been recorded and without seeking the permission of the court. While deciding issue No.3, it has already been held that these documents including Ex.D4/X4 cannot be taken into consideration in support of the pleas of defendant No.2. This document is allegedly signed by Shri H.R. Bhalla, however, no steps were taken by the defendant No.2 to establish that the alleged letter was signed by Shri H.R. Bhalla nor there is any such evidence which will prove that the letter was signed by Late Shri H. R. Bhalla. Therefore this letter cannot be considered in support of the pleas of the defendant no.2. A power of attorney dated 31st January, 1979 allegedly executed by Shri H.R. Bhalla in favour of Shri R.C. Bhalla has also been produced which has not been proved and is marked 'Z1'. The minutes of extraordinary general meeting dated 28th October, 1975 was also marked as D4/X2 and has not been proved. The document, annual reports and account for the year ending 31st December, 1979 was marked as D4/X which has a stipulation at page 281 'rent (to Managing Director Rs.12,000/- previous year Rs.12,000) but even the said document has not been proved nor can be considered for the reasons as detailed hereinabove. In the circumstances, there are no documents and evidence to show that the defendant No.4 had relinquished or given up his rights in the residential house Bhalla House 22 Park Area, Karol Bagh, New Delhi, on his own and he had shifted out from there and on account of his shifting from the said house he had lost his right in the said residential house or that he had given up his rights in the Bhalla House because the property in Anand Niketan was acquired from the funds of joint family.

14.8. The defendant No.2 is also unable to establish that funds were provided to defendant no.4 for purchase of house at C-66, Anand Niketan, New Delhi. From the deposition of the defendant no.2 what also emerges is that he has taken different stands at different times. In the written statement, it was pleaded by him that the said house at Anand Niketan was purchased out of joint family funds though it was purchased in the name of defendant No.4. However, in his deposition he admitted that a loan was arranged by defendant No.4 from LIC on his own initiative. The deposition thereafter became that the loan was repaid from the family business. It was also deposed that the house was purchased by defendant No.4 when the family was undergoing financial strains and hardships, however, he had given an assurance to deceased Shri H.R. Bhalla and his mother that as and when adjustment of the properties will be done, he will not claim any right, lien or share in the residential house. There is nothing to show that such an assurance was given by defendant No.4 except the oral deposition of defendant No.2 in this respect. Considering the entirety of evidence and documents it cannot be believed in the facts and circumstances. The defendant No.2 also had stated in his cross-examination on 15th December, 1997 that he had himself made substantial contributions for the purchase of property No.C-66, Anand Niketan, however, no evidence has been produced by defendant No.2 to show that any contribution was made by him in purchasing the said property by defendant No.4 in his own name. The defendant No.2 is also unable to show that the contributions were made by defendant No.2 from the funds of the two companies, H.R. Bhalla and Sons and M/s.Mechanical Movements Pvt. Ltd. The alleged documents, which have not been proved, which have also been filed without the permission of the court, do not establish the allegations made by defendant

No.2. Similarly, the plea that the amount of the loan taken by defendant No.4 from LIC was repaid by defendant No.4 from the funds given by the two companies to defendant No.4 on account of rent has not been established. The defendant no.2 is also unable to establish that he had himself made substantial contribution in purchase of property at Anand Niketan.

14.9. In the circumstances, it has not been established that the property at Anand Niketan was purchased in the name of the defendant no.4 from the funds of the joint family or the funds provided by the defendant no.2 or that the amounts for repayment of loan taken by the defendant no.4 were paid either by the joint family or by the defendant no.2.

14.10. In any case, the defendant No.2, in the facts and circumstances, cannot be allowed to raise the plea that the joint family is the benami owner of this Anand Niketan Property. This is no more res integra that after coming into force of Benami Transaction (Prohibition) Act, 1988, such a plea cannot be taken by defendant No.2. While dealing and deciding the issue No.3, it has already been held placing reliance on the judgments of the Supreme Court that under Section 4(2) of the said Act, the defendant No.2 cannot be allowed to raise such a plea in respect of any right qua the Anand Niketan property that it is held benami by the joint family and is liable to be partitioned.

14.11. Therefore, it cannot be inferred that defendant No.4 is not the owner of House No.C-66, Anand Niketan, New Delhi and the property is joint family property and it is liable to be partitioned. It has also not been established that the defendant no.4 had given up his rights in the property at Park Road on account of defendants no.4 property at Anand Niketan. Consequently, the issue No.4 is decided holding that defendant No.4 has right, title or interest in property No.22, Park Area, Karol Bagh, New Delhi and issue No.5 is decided holding that House No.C-66, Anand Niketan, New Delhi, is not a joint family property consisting of plaintiff and defendant No.1 to 4 but it is a property of defendant no.4. Issues are decided accordingly.

15. ISSUE NO.8 8. Whether the plaintiff has removed/taken away the House hold effects which fell to his share

15.1. No evidence has been led by the parties in respect of this issue as to what were the house hold effects of late Shri H.R.Bhalla and whether the plaintiff had taken away or removed the household effects which fell to his share. The alleged list of household and domestic articles was filed which was exhibited as P3, however, no evidence has been led to substantiate the allegations that these were the household articles/effects nor there is any evidence that any of these household articles were taken away by the plaintiff and as to what article fell to the share of the plaintiff. None of the counsel has advanced any arguments regarding this issue.

15.2. Consequently, the issue is decided holding that plaintiff had not removed or taken away the household effects which fell to the share of the plaintiff and the parties have failed to show as to what were the household effects of Late Shri H.R.Bhalla which were liable to be partitioned.

16. Issue No.9 9. Whether proper court fee has not been paid

16.1 Whether appropriate court fee has not been paid, this issue has not been addressed by the learned counsel for the parties. It has not been disputed that the plaintiff was in possession of a portion of the property of Shri H.R. Bhalla, in respect of which the partition has been sought by the plaintiff. This is no more res integra that if the plaintiff is not in possession of the properties,

he is liable to pay ad-valorum court fees on his share under Section 7 (iv) (b) of Court Fees Act but if the plaintiff is in possession of any portion of the properties to be partitioned, the plaintiff is liable to pay fixed Court fees under Article 17(6) of second schedule II of the Court fees Act. Reliance for this can be placed on 1977 Rajdhani Law Reporter 54, Jamila Kahtoon Vs Saidul Nisa; AIR 1999 DELHI 48, Smt. Prakash Wati Vs Smt. Dayawanti; 80(1999) DLT 357, Ms. Ranjana Arora Vs Satish Kumar Arora; 2005 Rajdhani Law Reporter 23, Harjit Kaur Vs Jagdeep Singh and 2005 (80) DRJ 120, Rajiv Oberoi and ors Vs Santosh Kumar Oberoi and ors. Since it has not been disputed that the plaintiff is in possession of a portion of the property, he was entitled to pay a fixed court fees at the time of filing the present suit. Therefore, the issue is decided holding that the appropriate court fee has been paid by the plaintiff.

17. Issue No.10 10. What will be the respective share of the parties in the suit property

17.1 The defendant No.5, 6, 7 and 8, daughters of late Shri H.R. Bhalla have already relinquished their share in favor of their brothers, plaintiff and defendant Nos.1, 2, 3 and 4. The widow of late Shri H.R. Bhalla has already expired. Consequently, the property of late Shri H.R. Bhalla, which is yet to be partitioned, Bhalla House, 22 Park Area, Karol Bagh, New Delhi, is to be divided between the plaintiff and defendant No.1 to 4. As plaintiff and defendant nos. 1 to 4 are five legal heirs of late Shri H.R. Bhalla who are entitled for equal shares in his property, the share of plaintiff and defendant No.1 to 4 in the joint family property, Bhalla House, 22 Park Area, Karol Bagh, New Delhi, shall be 1/5th share each. Issue is thus decided accordingly holding that the plaintiff and defendant nos. 1 to 4 have 1/5th share each.

18. Relief

18.1 Consequently, the suit for partition is decreed in favor of the plaintiff and defendant Nos.1 to 4 holding that they are the co-owners of 1/5th share each in the said property to be partitioned Bhalla House, 22 Park Area, Karol Bagh, New Delhi, and a preliminary decree for partition of the said property is passed according to the shares of the plaintiff and defendant nos. 1 to 4. Parties are left to bear their own costs. Decree sheet of suit CS(OS) 3198/1988 be drawn accordingly

19. Shri Mr. Mukul Talwar Advocate, (Cham) 226 Lawyers Chambers, Delhi High Court, New Delhi 110003 (Res) E-14, Sector 30 NOIDA (Mobile: 9810576660; Res: 95120-2451612, 95120-2451613) is appointed as a Local Commissioner to suggest the mode of partition of the joint Hindu family property, Bhalla House, 22 Park Area, Karol Bagh, New Delhi, by metes and bounds. The parties shall file the details of the property and the plan of the property before the Local Commissioner and shall appear before him on 15th February, 2008 at 3.30 P.M. The fee of the Local commissioner shall be Rs.50,000/-, in the first instance, to be paid by the parties in equal share of Rs.10,000/- each. The Local Commissioner shall give his report expeditiously within a period of four months.

20. The suit be listed for awaiting the report of the local commissioner before the regular bench on 19th May, 2008 subject to the order of the Honble the Chief Justice. Suit No.503/1990

21. The suit for permanent injunction was filed by the plaintiff, Shri P.C. Bhalla against the defendants in the court of Sr. Sub-Judge praying inter alia that defendant No.1 and his family members be restrained from interfering with the peaceful possession of plaintiff in respect of a portion which is in exclusive possession of plaintiff shown in red in the plan attached and from interfering with enjoyment and user of other common portions of the said property.

22. The suit was contested by defendant No.1, who filed the written statement contending that the plaintiff has concealed the material facts in as much as that the plaintiff has not disclosed that from the years 1970 to about 1976-77 he had been staying abroad and thereafter, plaintiff had been staying in Government accommodation allotted to him since 1977-78. The allegation that the plaintiff is in possession of any portion of property No. 22, Park Area, Karol Bagh, New Delhi was denied. The suit was also contested by defendant No.4 raising similar plea and contending that though he is staying at premises 2/255, Vinay Marg, New Delhi the address given in the plaint of the plaintiff is not correct.

23. On the basis of pleading and documents of the parties, the following issues were framed on 5th July, 1988. 1. Whether the suit is bad for non-joinder of parties OPD 2. Whether the plaintiff is entitled to injunction as prayed for OPP 3.Relief.

24. The suit was transferred to the High Court and is listed with suit No.3198/1988 for partition filed by the plaintiff against the defendant nos. 1 to 4.

25. On 2nd November, 1988, it was stated by the counsel for the plaintiff that he had deposited one key of the room marked 'Y'. The counsel for the defendant contended that there is one more key which was denied and it was pleaded by the counsel for the plaintiff that the lock is old and only one key is available and it was undertaken that the lock of the said room shall not be opened and the room shall not be used till the disposal of the suit.

26. The defendants also moved an application to put their own lock on the lock, the key of which was deposited by the plaintiff in the Court, which application was, however, rejected on 2nd November, 1988.

27. No arguments have been advanced by the counsel for the parties in respect of the suit and the issues framed therein, however, perusal of the order reveals that an order dated 2nd December, 1996 was passed in IA No.1893 of 1991 disposing of the application of the plaintiff and giving permission to the plaintiff for consideration of his application for opening the room marked 'Y' which was locked, in case the wife of the plaintiff who was in government service, retires from the government service.

28. By order dated 6th February, 1997 in IA No.663/1997 it was directed that the lock of the room mark Y be opened and possession thereof be given to the plaintiff. This order directing opening the lock of room Y and giving the possession to the plaintiff was not challenged by any of the parties. The evidence in the matter was to be recorded before the Local Commissioner, however, it appears that no evidence was led by any of the parties in respect of the issues framed.

29. Issue No.1 Whether the suit is bad for non-joinder of necessary parties

29.1. The onus to prove this issue was on the defendants. No evidence has been led as to how the suit is bad for non-joinder of parties and as to who are the necessary parties who have not been joined. No argument was advanced on this issue. In any case, the plaintiff No.1 and defendant Nos.1 to 4 are the legal heirs of deceased H.R. Bhalla who are the party to the suit and consequently it cannot be held that the suit is bad for non-joinder of parties.

30. Issue No.2 2. Whether the plaintiff is entitled to injunction as prayed for OPP 30.1 The onus to prove this issued was on the plaintiff, however, no evidence has been led by either of the

parties. From the various orders passed from time to time, it is apparent that the possession was with the plaintiff and it was restored to the plaintiff pursuant to orders of this court which order was not challenged. The parties have also not advanced any arguments nor it has been refuted by the defendants that plaintiff is not in possession of room marked 'Y', the possession of which was given to the plaintiff during the pendency of the suit. If the plaintiff is in possession of a room, he cannot be dispossessed without due process of law unless it is established that he is not entitled to retain the possession. Whether the plaintiff will be entitled to retain the possession of the room marked 'Y' can be decided only in case the property is divided by metes and bounds pursuant to a preliminary decree already passed in the suit for partition between the parties. Consequently, the issue is decided in favor of the plaintiff holding that the plaintiff is not to be dispossessed without due process of law.

31. No other issue arises nor any other plea has been raised. Consequently, the suit of the plaintiff is decreed and a decree of permanent injunction is passed in favor of the plaintiff and against the defendant directing the defendant Nos.1 to 4 not to dispossess plaintiff from Room marked 'Y' without due process of law. Considering the facts and circumstances, parties are left to bear their own costs. Decree sheet be drawn of this suit, CS (OS) 503 of 1990.

January 18, 2008

Sd./-
ANIL KUMAR J.