

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.11.2010

CS(OS) No. 2272/1986

DR. (MRS.) VINOD PRABHA BHANOT

..... PLAINTIFF

Vs

MRS. SAVITRI DEVI CHOPRA & ORS.

..... DEFENDANTS

Advocates who appeared in this case:

For the Plaintiff: Mr S.C. Singhal & Mr Sanjay, Advocates
For the Defendants: Mr Sujoy Kumar, Advocate for Defendant No. 1
Mr Jagdev Singh & Mr Arvind Mishra, Advocates for Defendant No. 2.
Mr Chaman Lal Sachdev & Mr Chitranshul Sinha, Advocates for Defendant No. 3.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to Reporters or not ? No
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. The captioned suit brings to fore the neglect which senior citizens in our country face today. What makes matter worse for the senior citizens is that the neglect and callousness, towards their well-being, emanates from members of their own family. It is these very members of the family, who do not have the time of the day for their parents in their lifetime, gather around to claim rights in the estate of the deceased parents no sooner they pass away. It is perhaps a reflection of times we live in. There is crying need to provide for the health, security, and where necessary, shelter for senior citizens. With this preface let me briefly detail out the background in which the present suit has been filed.

2. The plaintiff has filed a suit for partition and rendition of accounts in respect of the estate of her father late Sh. D.R. Chopra. Sh. D.R. Chopra admittedly passed away on

02.11.1982. He left behind legal heirs comprising of: his wife late Savitri Devi Chopra, his two daughters Dr. (Mrs.) Vinod Prabha Bhanot, i.e., the plaintiff and Mrs. Indu Sehgal, originally arrayed as defendant no. 4; and his two sons Mr Ish Kumar Chopra and Mr Ashwani Kumar Chopra.

2.1 For the sake of convenience I would be referring to late D.R. Chopra's legal heirs by their first name.

2.2 After the death of D.R. Chopra the instant suit was filed by Vinod Prabha on 28.07.1986. The suit was moved in court on 31.10.1986, when summons were issued to the defendants and ad interim ex-parte injunction was granted restraining Savitri Devi (the then defendant no. 1) from selling, mortgaging, gifting or in any way alienating the only immovable property bearing: municipal No. 7/10, South Patel Nagar, New Delhi (hereinafter referred to as the 'South Patel Nagar property') which is subject matter of internecine fight amongst the legal heirs.

3. In the plaint, briefly, the case set up by Vinod Prabha is, her father D.R. Chopra died intestate. Her father had migrated from West Pakistan in 1947, pursuant to the partition of the country. The South Patel Nagar property was acquired by her father D.R. Chopra in lieu of "ancestral property" owned by the family of D.R. Chopra, in West Pakistan, against "verified claims". It is further averred that D.R. Chopra made improvements in the property, with his own funds, in the form of additions to the super-structure, resulting in the construction of two rooms and "other structural additions". It is also averred that her mother Savitri Devi was a home maker, and she had no earnings of her own. It is further stated that, therefore, on the death of her father she along with her mother and other siblings, who are residents of USA, had acquired 1/5th share in the estate of her late father D.R. Chopra. The estate, as per averments made in the plaint, not only includes the South Patel Nagar Property, but also valuables in the form of gold jewellery weighing about approximately 800 grams (80 tolas), and money in the form of fixed deposits in the sum of Rs 60,000/- in addition to interest accrued thereon. The details of the assets of late D.R. Chopra are given in annexure 'A' appended to the plaint.

3.1 It may be relevant also to note at this stage certain averments made in the plaint, in particular, in paragraph 6 which does seem to indicate that the plaintiff/Vinod Prabha did not enjoy a cordial relationship with her parents. When read in conjunction with the evidence on record, this comes through quite clearly. The position is perhaps no better, in so far as her siblings are concerned. I shall advert to this aspect in the latter part of my judgment. Suffice it to say, at this stage, that in paragraph 6 of the plaint the plaintiff has averred that at the relevant point in time she was residing in Punjab, and since the conditions in Punjab were inimical and unsafe generally with regard to people at large, (I assume the reference is to the terrorism era in Punjab), she had asked her mother whether she could stay in Delhi with her; which, according to her, the mother refused. There is also an averment to the effect that whilst the mother refused to disclose the details of immovable properties, bank accounts and other assets of the deceased father, D.R Chopra, she continued to squander the estate left behind by her late father. This assertion was buttressed with the allegation that her mother was surrounded by godmen, whose company according to the plaintiff/Vinod Prabha was leading to erosion of the estate.

4. Before her death Savitri Devi filed a written statement. In the written statement she categorically denied that South Patel Nagar Property was an ancestral property. She instead took the stand that the South Patel Nagar property was a self-acquired property of late D.R. Chopra; acquired by him from his own earnings, and from gains made from sale of jewellery of Savitri Devi. She specifically denied that South Patel Nagar property was acquired against "verified claims" by her late husband. Savitri Devi, as a matter of fact, claimed, in her life time; sole and absolute ownership of the South Patel Nagar property based on a Will dated 16.06.1982 evidently, executed in her favour by her late husband D.R. Chopra. A photocopy of the Will dated 16.06.1982 was filed by Savitri Devi in court. Savitri Devi also denied that she was left with any gold jewellery or fixed deposits as alleged or at all in the plaint for the reason that most of the money was spent on the education of her children. It was categorically stated that even though she had a locker in

her name, there was nothing in the locker and, therefore, the only property left behind by her late husband was the South Patel Nagar property, and some amounts in the bank. She claimed that the most of the amount had been spent on her day to day maintenance, and that she was living on small amounts left in the bank account of her late husband and earnings of her sons. She specifically averred in her written statement that her earnings were such that she was living from hand to mouth. There is also a reference to the effect that the plaintiff /Vinod Prabha had entered into matrimony of her own volition, to which Savitri Devi had objection.

5. Interestingly, while in the written statement filed by Ish Kumar, he supported the stand taken in the plaint to the extent it concerned the South Patel Nagar property; in his deposition, in court, he took a contrary stand to which I will make a reference shortly. Ish Kumar, in his written statement, took the stand that the South Patel Nagar property was bought against “verified claims” in respect of ancestral property which, the Chopra family evidently owned in West Pakistan. He also averred that his father D.R. Chopra had made improvements in the South Patel Nagar property out of his self-acquired funds, to which reference is made in the plaint. Incidentally, since Ish Kumar had filed a written statement after the death of his mother, he claimed a share in the estate of D.R. Chopra to the extent of 1/4th. He further averred that he had no knowledge with regard to any other property having been left behind by D.R. Chopra, that is, gold jewellery and amounts in the fixed deposits etc. In any event, he averred that if other assets were found as part of the estate of D.R. Chopra he would also want an equal share along with his siblings.

6. The written statement filed by Ms Indu Sehgal took a stand similar to that of Ish Kumar. As a matter of fact at one point in time both Ashwani Kumar and Indu Sehgal were represented by same counsel, that is, Chaman Lal Sachdev; but Chaman Lal Sachdev, during the latter part of the proceedings, appeared only for Indu Sehgal; while Ashwani Kumar was represented by another counsel, Mr Sujoy Kumar.

7. It is only in the written statement of Ashwani Kumar, wherein a contrary stand has been set up to the effect that the South Patel Nagar property was the self-acquired

property of late D.R. Chopra. It is averred that late D.R. Chopra acquired leasehold rights in the land for a period of 99 years. In so far as the super-structure, that is, the building is concerned, it was purchased, according to him, on execution of deed of conveyance. There are no dates of deed of conveyance set out in the written statement; though, during the course of evidence, the deed of conveyance dated 30.08.1972 was produced by Ashwani Kumar. However, more crucially it is stand of Ashwani Kumar to the effect that the South Patel Nagar property was a self-acquired property of late D.R. Chopra, which he had bequeathed to him vide Will dated 03.05.1975 (Ex. D2W1/1) (also exhibited as D2W2.1); an aspect which is dealt with in the latter part of my judgement. Therefore, as a logical sequitor a claim is made in respect of other assets based on the said Will dated 03.05.1975 (Ex. D2W1/1).

8. There is on record a replication filed by Vinod Prabha qua written statement filed by Savitri Devi. In the replication she reiterated her stand taken in the plaint, and denied the stand taken by Savitri Devi that she was the sole and absolute owner of the South Patel Nagar property by virtue of Will dated 16.06.1982 which her mother, i.e., Savitri Devi had set up. She alleged that the mother had produced a Will, which is a forged Will, only to deprive her children of their legitimate share in the estate of their father.

9. Based on the aforesaid, the court, in the first instance, by order dated 08.01.1996 framed the following issues:

- (1) *Whether the property bearing No. 7/10, West Patel Nagar, New Delhi belonged to the Joint Hindu Family? If so, to what effect?*
- (2) *Whether the deceased had left behind the movable properties, mentioned in the annexure 'A' to the plaint?*
- (3) *Whether the plaintiff is entitled to partition and separate possession of the property?*
- (4) *Relief.*

10. With the preliminaries completed parties proceeded to lead evidence in the matter. Parties completed the exercise of leading evidence in the matter on 12.03.2010. The matter being ripe for hearing was put in the category of 'finals'. The matter was heard on

various dates in July, 2010. However, during the course of their arguments, counsel for Ashwani Kumar moved an application on 06.09.2010 for framing of two additional issues in the matter. The counsel for Aswani Kumar conveyed to the court that even though a defence with regard to Will dated 03.05.1975 (Ex. D2W1/1) has been raised in the written statement, no issue pertaining to the same have been framed by the court. By an order of even date, i.e., 06.09.2010 I framed two additional issues. For the sake of convenience these two additional issues are numbered as 5 & 6; these being:

(5) *Whether the Will dated 03.05.1975 is legal, valid and last Will and testament of late Sh. D.R. Chopra. If so, to what effect? OPD2*

(6) *Whether the defendant no. 2, Sh. Ashwani Kumar Chopra has become the sole owner of the property no. 7/10, South Patel Nagar, New Delhi by virtue of Will dated 03.05.1975? OPD2*

EVIDENCE LED BY PARTIES:

11. Before I proceed further, let me also advert to the relevant parts of the evidence led by parties. Examination-in-chief was carried out by parties by filing affidavits by way of evidence. In the affidavit of evidence filed by Vinod Prabha she more or less replicated the stand taken by her in the plaint. Mr Ashwani Kumar did the same; that is, took the same stand as he had taken in the written statement. Ashwani Kumar produced Will dated 03.05.1975 (Ex. D2W1/1) in original. As was his stand in the written statement, he claimed his rights in the estate of his father based on Will dated 03.05.1975 (Ex. D2W1/1). He asserted, in particular, that the South Patel Nagar property had been bought by D.R. Chopra by using his own funds, and that the said property was not an ancestral property.

11.1 Ms Indu Sehgal in her examination-in-chief also took, almost the same stand, as was taken by her in the written statement. A relevant difference being; and which requires a mention, is with respect to the South Patel Nagar property - while in the written statement she has averred that the South Patel Nagar property had been obtained by her father against “verified claims” of ancestral property left behind in West Bengal,

in the examination-in-chief she stated that her father had purchased the said property from compensation received against property left behind in West Pakistan. In sum and substance she asserted that the South Patel Nagar property was not a self-acquired property of her father late D.R. Chopra. In addition to the above, she made two significant assertions. The first one that the Will dated 03.05.1975 (Ex. D2W1/1), produced by her youngest sibling Ashwani Kumar, was not a genuine Will as it was drawn up on a paper which was *“torn from the bottom”*. This assertion she attempted to prove by alluding to another copy of the Will which was evidently given to her by her other brother Ish Kumar. This copy of the Will was drawn up on a full scape paper and had the word “witness” typed on it. This copy of the Will; which was an incomplete document; was filed in court by Indu Sehgal. There was also an assertion that at the relevant point in time, that is, May 1975, her father was not keeping good health, and that, while he had a good relationship with her, his relationships with Ashwani Kumar were far from good. For this purpose she adverted to photocopies of letters dated 24.05.1981 (Ex. RW3/1), 04.09.1981 (Ex. RW 3/2), 02.05.1982 (Ex. RW 3/3) and 15.03.1982 (Ex. RW 3/4). In her examination-in-chief Indu Sehgal identified signatures of her father.

12. As indicated hereinabove, Ish Kumar, in his examination-in-chief, which was also a deposition made on affidavit, shifted from the stand taken by him in the written statement. In his examination-in-chief he submitted that since the plaintiff, that is, his sister Vinod Prabha, had presented a particular state of affairs, he took the stand, which he did in the written statement:, though on his own he had no evidence, documentary or otherwise to support that stand. He adverted that he had not seen the original Will dated 03.05.1975 (Ex. D2W1/1) and hence, he could admit or deny the same only after seeing original. Since he did not know about the Will dated 03.05.1975 (Ex. D2W1/1) he had denied its existence in the written statement.

13. In support of his case, Ashwani Kumar had examined one Jetha Nand Tuteja (hereinafter referred to as ‘Tuteja’). Tuteja was evidently a witness to the Will dated

03.05.1975 (Ex. D2W1/1) along with one Surender Singh. It is pertinent to note that Surender Singh was not examined as a witness. Tuteja in his examination-in-chief, on being shown the Will dated 03.05.1975 (Ex. D2W1/1), stated that the said Will bore the signatures of late D.R. Chopra at point 'A', and that he had signed the said Will at point 'B'. He also adverted to the effect that late D.R. Chopra had signed the Will in his presence, and that one "Sardarji" had also signed the Will as a witness. This Will, according to Tuteja, was executed within the precincts of Tis Hazari Court and, at the time of execution of the Will, late D.R. Chopra was in a good health both mentally and otherwise; and that there was no pressure or coercion exerted on him.

14. In the cross-examination, what emerges is that, except for Ish Kumar all other parties have stuck to their various stands as taken in the pleadings. Let me therefore refer to the relevant parts of the cross-examination of the witnesses produced in the case.

14.1 The plaintiff/Vinod Prabha, in her cross-examination, in respect of South Patel Nagar property deposed as follows:

"...The property of Patel Nagar was allotted to my grandfather as refugee against his ancestral property in Pakistan. (Vo.). He segregated this property.

It is correct that this property of Patel Nagar was allotted to my grandfather in a claim against the property of Pakistan. Again said, my father was allotted this property at Patel Nagar, in lieu of ancestral property in Pakistan. It is correct that house No. 7/10, South Patel Nagar was allotted to late Sh. D.R. Chopra. It is incorrect to suggest that in addition of 2 rooms and other additions in the said property was created out of the exclusive funds of D.R. Chopra, (vol.) A large portion of the fund for additional my east c and in part from my sister and myself also.....

.....My ancestral property was situated at Amuna Bagh, Gujranwala and Nehru Gali, Krishna Nagar, Lahore.

I have no document to show that my ancestrals were having property in Lahore before Pakistan. I heard it from my parents....

....It is correct that my grandfather died after partition of the country. Again said, he died around partition of the country.

It is incorrect to suggest that my grandfather did not leave his ancestral property in Pakistan in lieu of which Patel Nagar property was allotted.

I am aware that there is evacuee property department which used to do the allotment of the properties in India in lieu of the properties left by the refugees from Pakistan.

I have seen the lease deed executed by my father in respect of the suit property. (vol.) but it is not with me.

I have not filed copy of the lease deed with the suit because I do not have the same with me.

I am not aware of the year of execution of this lease deed.

It is incorrect that my late father who had executed the lease deed had paid the lease rent amount to the government.

I cannot say whether this lease deed was executed in 1972 or not.....”

14.2 Based on her deposition, a part of which has been extracted above, the plaintiff/Vinod Prabha claimed that she had 1/4th share in the estate of the deceased D.R. Chopra. She consistently, in her examination-in-chief denied the existence of the Will dated 03.05.1975 (Ex. D2W1/1). On being cross-examined as regards the relationship with her mother, she avoided the question on the ground that it was a question which was personal in nature, and hence would not like to answer the same. She further adverted to the effect that she used to visit her mother, and that her last visit was made in the month of June before her death. Her mother evidently expired on 13.03.2004. There was also an assertion in the cross-examination to the effect that some construction was carried out in the South Patel Nagar property in and around 1972 and thereafter in 1974.

15. In so far as Ashwani Kumar was concerned he adhered to the stand taken by him in the examination-in-chief that the Will dated 03.05.1975 (Ex. D2W1/1) was a genuine Will. He deposed that he recognized his father's signatures which was duly witnessed by the witnesses, who had attested the Will. Ashwani Kumar, however, scrupulously avoided giving answers with regard to the four letters which Indu Sehgal produced during the course of her examination-in-chief which are marked as DA, DB, DC and DD; on the ground that they were photocopies. During the course of cross-examination, consistent with the stand that the South Patel Nagar property was not an ancestral property but was a

self-acquired property of D.R. Chopra, he produced the original of the conveyance deed dated 30.08.1972 marked DE. On being shown the photocopy of the document marked DE, (which was a photocopy of the document produced by Indu Sehgal to impugn the Will dated 03.05.1975) Mr Ashwani Kumar stated as follows: *“I have seen the alleged copy but it is not the exact copy of the Will Ex. D2W2/1 and the copies can be manipulated in whichever ways one want. I am only talking about original, Ex. D2W2/1 that does not reassemble the copy of Mark DE.”*

15.1 In his cross-examination he made it a point to advert to the effect that the plaintiff/Vinod Prabha did not have good relations with parents since she had “eloped” with a person who did not have the approval of her parents. On being cross-examined by the plaintiff/Vinod Prabha’s counsel, as regards the Will dated 03.05.1975 (Ex. D2W1/1) and the estate of deceased D.R. Chopra, he stated as follows:

“Q. Please tell the date, month and year when your father handed over the alleged Will Ex. D2W2/1 to you?”

Ans. My father handed me over this Will to me in 1977. I do not remember the month it was summer and it was handed over to me when we were living in Sarvpriya Vihar, New Delhi.

Q. When your father had shifted for the first time in the suit property, H. No. 7/10, South Patel Nagar, New Delhi?

Ans. It was in 1978 in the summer, when my father and I had shifted to the house.

Q. When did you migrated to USA.

Ans. In the year 1982.

Q. Please give the month and date of your migration to USA?

Ans. It was in the month of June or July 1982. I do not remember the exact date, I can get you the date from the records.

Q. Is it correct that since 1982 you are in USA?

Ans. Yes. I was in USA since 1982, but in 1985-86 I had come to India.

Q. When your father retired from the government job?

Ans. He retired somewhere in early 1960s.

Q. What was your father’s source of income since 1960 onwards, from the date of retirement?

Ans. My father used to work at India Emporium as a consultant for exports and imports.

Q. Is Mr J.N. Tuteja known to you?

Ans. Only from the Will Ex. D2W2/1 that he had signed.

Q. You have never seen him (Mr. J.N. Tuteja) either in the company of your father or otherwise?

Ans. I do not remember.

Q. How do you know Mr Surender Singh?

Ans. He signed the Will Ex. D2W2/1.

Q. Otherwise, you do not know Mr Surender Singh?

Ans. Yes. I do not know him.

Q. What your father left behind except the suit property at the time of his death, cash jewellery etc.

Ans. Since I was not present at his cremation, I do not know, if he left anything.

Q. Please see the alleged Will Ex. D2W2/1, your father had mentioned about bank accounts and other household fixtures and fittings, jewellery and ornaments, did you made any inquiry in this regard/

Ans. My mother had the right of residence and maintenance as per the Will and she was very well qualified to do whatever she wanted to do with, if there was any money or jewellery.

Q. Do you have any knowledge whether your father left behind such things as mentioned above?

Ans. I have already stated that I was not in India and I am not aware of those things.

Q. Had you made any inquiry about the above things left by your father, after the death of your mother?

Ans. No it was my mother's business and I am not aware about it as per my knowledge.

Q. Can you identify the signature of your mother?

Ans. Yes.

Q. I place before you a document mark DF, can you identify the signature of your mother? (Objected to by counsel for the defendant no. 2 on the ground that it is a carbon copy. Kept open to be decided by the Hon'ble court at the time of final arguments.)

Ans. It is my firm belief that I do not believe in copies and I will not answer the same.

Q. Please see that the said copy mark DF bears the original signatures of your mother, what you have to say?

Ans. The signatures seem to be original of my mother at point A on the documents Mark DF, but the rest of the contents of the document, I do not know when it was produced and how it was produced, but still other than the signature, everything is a copy.

Q. Is it correct that your father had left behind of 80 tollas of gold and sufficient cash amount and two scooters besides other things at the time of his death.

Ans. I was not present at the time of his death. I did not see any of such thing, when I came back.”

15.2 As regards a question as to the point in time he became aware of the instant case, he gave two contrary answers. The first one being as follows: *“On my mother’s death, the Assistant Commissioner of Police, I do not remember his name, called me in and he showed me the case for partition of this property 7/10, South Patel Nagar, New Delhi. I replied to him that my sister told me that she had put in a case so that other people do not sell the house, but it was not for partition, and ACP showed me the report and he said this is about partition and I was not aware till that time”*; and the second being: *“It was somewhat around end of 1987, as far as I remember”*. On being asked as to what took him so long to produce the said Will dated 03.05.1975 (Ex. D2W1/1), his answer to the question was as follows: *“Yes, I did not, till my mother died, because it was her right to live there till her death.”*

16. In so far as the cross-examination of Indu Sehgal is concerned, she adverted to the effect that the plaintiff/Vinod Prabha had got married against her parents’ wishes, and her relationship with them was not strong and therefore would visit them off and on. What is crucial is that she produced the originals of four letters which were exchanged between the sisters as also between the mother and those written by her father to her in which he had spoken about the behaviour of his children towards him, in particular, Ashwani Kumar. With respect to Ashwani Kumar’s relationship with his parents, and whether late D.R. Chopra would have bequeathed his estate to Ashwani Kumar, Indu Sehgal deposed as follows:

“Q. Is it correct that Ashwani Chopra first time married to Ms Pinky Malhotra and was divorced subsequently?”

Ans. It is correct.

Q. Is it correct that Ashwani Chopra eloped with Lekha?

Ans. It is correct. That is what my parent told to me.

Q. Is it correct that on account of said elopement, his (Ashwani) relations were not cordial with parents?

Ans. Yes. The relations were very very bad.

Q. Is it correct that your father was writing letters to you before his death, that he does not want to give anything to Mr Ashwani Chopra & Ors.?

Ans. It is correct. Except me he did not want to give anything to anybody else. I have lot of letters of my father with me in this regard that he did not want to give his property to any children except me and he wanted to endorse his property by law to me.

Q. Can you produce such letters?

Ans. Yes I have already placed four letters in my examination and I have got one more letter which my father wrote three months prior to his death. The said letter is Ex. D3W1/PL. (Copies of said letter supplied to counsel for the parties)

16.1 On being cross-examined by the counsel for Ashwani Kumar regarding Will dated 03.05.1975 (Ex. D2W1/1) Ms Indu Sehgal stated as follows:

“Q. Have you ever spoken to the witnesses to Will dated 03.05.1975?”

Ans. According to my knowledge there is no Will. My father used to tell me that he wants to sell the property and put that money legally on my name and my son’s name. My sons’ name is Neeraj, and the said letters I have already given to the court. I never wanted to take whole property and I just wanted my share because I am a part of that family.

Q. Do you know anybody by the name of Mr J.N. Tuteja and Mr Surender Singh?

Ans. I have never heard of such persons.

Q. Is it correct that the Will dated 03.05.1975 is the last Will and testament duly executed by your father late Shri D.R. Chopra?

Ans. No it is not correct. He never wrote any Will. He was disappointed with his sons as they were not treating well and he wanted to sell the house and wanted to move to USA and wanted to stay with me.

Q. Is it correct that property in question is not joint Hindu family or ancestral property, but a property acquired by late Shri D.R. Chopra by his self acquired funds?

Ans. No it is incorrect. My grand father got in the claim and gave it to my father Shri D.R. Chopra.

Q. Is it correct that as this property was a self acquired property, Mr D.R. Chopra had every right to bequeath this property to Mr Ashwani Chopra?

Ans. It is incorrect. It was my grand father's property which he got in claims and gave it to my father regarding this I have deposed hereinabove."

16.2 On Ashwani Kumar's relationship with his father Indu Sehgal once again stated as follows:

"Q. Do you remember as to when your brother Ashwani Chopra married Lekha?

Ans. I believe it was in the year 1981 and it was court marriage. According to parents it was not a proper marriage and my parents never accepted the same.

Q. Are you aware as to when Ashwani Chopra was divorced?

Ans. Yes. Because my mother came to USA as I was sick and that in the year 1977 and Ashwani Chopra was getting divorced in the first marriage at that time.

Q. Is it correct that the relationship between Ashwani Chopra and his father D.R. Chopra was cordial?

Ans. It is incorrect. They had no good relations. My father died because of this stred and heart attack given by Ashwani Chopra.

Q. Is it correct that D.R. Chopra Willed the property to Ashwani Chopra because he loved him most and as he was the youngest?

Ans. It is incorrect. (Vol. That is why he wrote letter to me just before three months he died that he wanted to sell the house and transfer the property on my name legally and the letter has been submitted to the court.)

Q. In para No. 10 of your affidavit of evidence, I put it to you that Mr Ish Chopra your brother never gave you another copy of the Will as you have stated in said para No. 10 of your affidavit of evidence?

Ans. It is incorrect. I further state that Ish Chopra give me the copy of the Will recently and I do not believe that it is the copy of any original Will as there was no Will. Ish Chopra was with me in the case filed admitting that there was no Will and after few months Ashwani Chopra and Ish Chopra

are doing anything behind me and Mr Ish Chopra brought Mr Sachdeva brought legal advisor and Mr Ish Chopra forced me to admit this Will, but I am not as there is no Will”

16.3 In respect of the letters that Indu Sehgal had produced during the course of her cross-examination, the counsel for Ashwani Kumar cross examined her by restorting to the following line of questioning: whether she would have retained letters which were more than 25 years old, to which she replied that she had retained them for sentimental reasons as she was living alone in USA. Indu Sehgal was also shown, in her cross-examination by the counsel for Ashwani Kumar, photographs of Ashwani Kumar's second marriage, which, amongst others, included their parents. Indu Sehgal identified her parents in most of the photographs. To a specific question that the photographs shown (Marked D3X1 to D3X15) were wedding photographs of Ashwani Kumar, where his parents were present, Indu Sehgal deposed as follows: *“I cannot admit or deny this suggestion. I further state that there was reconciliation after arguments I do not know whether same were wedding pictures or not because I was not here in India.”*

17. As regards Ish Kumar, during his cross-examination he was shown the original Will dated 03.05.1975 (Ex. D2W1/1). On being shown the same he adverted that the signature on the Will were that of his father. His assertion, was based on the fact that he had seen his father signing and writing on earlier occasions. He also testified that he did not know the two witnesses who had appended signatures on the Will dated 03.05.1975 (Ex. D2W1/1), that is, Mr Tuteja and Mr Surender Singh. He also identified the signatures of his mother at point 'A' and 'B' on the written statement filed by her. When asked as to what he had to say about his mother having propounded another Will, he emphatically denied that as being incorrect. Ish Kumar was also shown his written statement and the affidavit accompanying the written statement. He identified his signatures both on the written statement as well as the affidavit accompanying the written statement. He also accepted the fact that he had verified the averments made in the written statement being correct based on the knowledge he possessed at that point in time. As regards the South Patel Nagar property he deposed that it was not a property

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which had been acquired against “verified claims”, and that he had become aware of the status of the property only on 04.03.2009 when the original Will was shown to him in court.

Submissions of counsels

18. In the background of the pleadings and evidence on record, submissions were made by counsels in support of their respective cases in line with the stand taken therein. Mr Singhal made submissions on behalf of the plaintiff/Vinod Prabha while, Mr Sachdeva appeared on behalf of Indu Sehgal. Ish Kumar was represented by Mr Sujoy Kumar and Mr Ashwani Kumar was represented by Mr Jagdev Singh. The submission of Mr Singhal and Mr Sachdev were more or less same.

19. Mr Singhal contended that the South Patel Nagar property was purchased against claims received in lieu of the ancestral property left behind in West Pakistan. Being a property in respect of which D.R. Chopra could not have made a Will, the plaintiff/Vinod Prabha along with her siblings was entitled to a 1/4th share in the estate. Mr Singhal impugned the Will dated 03.05.1975 on various grounds by adverting to the circumstances surrounding the Will, which, according to him, impinged upon its genuineness. Mr Singhal submitted that what has come through in the testimonies of Tuteja and Ashwani Kumar was that late D.R. Chopra retired in 1960; the Will dated 03.05.1975 evidently was purportedly executed 15 years thereafter, i.e., in 1975 and for that purpose Tuteja appears to have emerged almost from the past as a witness to attest the Will. Tuteja, according to Mr Singhal, on his own showing had not had much interaction with late D.R. Chopra family. Therefore, to suddenly discover Tuteja, the purported witness to the Will, seems incredulous. Mr Singhal also drew my attention to the Will to demonstrate that on the face of it the Will is forged. Mr Singhal laid stress on the point that the Will, which was being propounded by Ashwani Kumar, was drawn on a paper, which was 1/4th its original size, and also that the place where the signatures of D.R. Chopra were evidently appended had a tick mark (√) on it. The signatures of the witnesses on the left side bottom of the page seem to have been squeezed which,

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evidently demonstrated that they were ante-dated. He compared the Will dated 03.05.1975 with the photocopy of a document marked DE filed by Indu Sehgal. He said, on comparing the two it was quite evident (although the photocopy of document marked DE did demonstrate that) the document which purported to be a Will had been drawn up on a full scape paper. It was not executed in accordance with law for whatever reason as signatures of the witnesses were not appended therein. Mr Singhal, however, made it a point to draw my attention to the fact that the photocopy of the document marked DE had the word 'Witness' typed on it. Since the original document of the purported Will dated 03.05.1975 (Ex. D2/W1/1) was available with Ashwani Kumar, it was incomplete, as according to Mr Singhal, Ashwani Kumar had evidently torn the bottom half of the document and then obtained the signatures of the two witnesses Surender Singh and Tuteja by ante-dating their signatures on the document. Mr Singhal stressed the fact that Tuteja's testimony could not be relied upon because Tuteja, in his testimony, had claimed that in 1975, when he was called as a witness, he worked as a UDC in the department, in which, D.R. Chopra was employed; while D.R. Chopra, on Ashwani Kumar's own showing, had retired in 1960. Mr Singhal also laid stress on the fact that the provisions of Section 63(c) of the Indian Succession Act, 1925 (hereinafter referred to as the "Succession Act") required each witness to have seen the other witness executing document in his presence. Mr Singhal, therefore, emphasized the fact that Tuteja in his testimony did not advert to the effect that other witness Surender Singh had signed in his presence. For this purpose he relied upon the following extract: "*One Sardarji whose name I don't remember, who has also signed as witness to the said Will*". In support of his submissions, he relied upon the following judgments:

Girja Datt Singh vs Gangotri Datt Singh AIR 1955 SC 346; Karri Nookaraju vs Putra Venkatarao & Ors. AIR 1974 AP 13 and T. Venkat Sitaram Rao & Anr. vs T. Kamakshamma & Ors. AIR 1978 Ori 145.

19.1 Mr Singhal further submitted that although evidently Mr Ashwani Kumar had had the Will dated 03.05.1975 (Ex. D2/W1/1) in his possession since 1978 he neither

disclosed this fact to any person or authority nor did he obtain probate of the Will even after the instant case was filed in court in 1986. For the first time the purported Will (Ex. D2/W1/1) was produced in court only in 2005. Mr Singhal further submitted that once the evidence is read in totality it would appear that the Will in question was not fully executed, which was apparent from the nature of the relationship which the parents shared with Ashwani Kumar. For this purpose he relied upon letters which late D.R. Chopra had written to his daughter Indu Sehgal. It was Mr Singhal's submission that based on these surrounding circumstances the Will dated 03.05.1975 appears to be a forged document, and should not be given any credence by the court. Mr Singhal, in support of his client's case, stated that the estate of the deceased should be divided equally amongst the children of the deceased D.R. Chopra.

20. Mr Sachdeva, who appeared for Indu Sehgal, apart from supporting the stand taken by Mr Singhal, raised two additional points. The first being that: since probate had not been sought by Ashwani Kumar qua Will dated 03.05.1975, for which period of limitation was three years, the said document could not be relied upon by Ashwani Kumar for canvassing his case before any civil court. For this purpose Mr Sachdeva relied upon the judgment of a Single Judge of this Court in the case of *Shri Gurmeet Singh Chopra vs Smt. Taruna Chopra & Ors. CM(M) No. 305/2010 dated 22.03.2010*. Mr Sachdeva elaborated this proposition by submitting that since the probate court would have exclusive jurisdiction to decide with respect to the legal validity of the Will; a step which Ashwani Kumar had not taken, therefore, he could not be allowed to lead evidence to prove the Will. In other words Mr Sachdeva says that if the Will dated 03.05.1975 is removed from the ambit of the dispute obtaining between the parties then necessarily the estate of late D.R. Chopra would have to be divided equally amongst the disputant parties. As regards the limitation of three years being attracted to probate proceedings reliance was placed on the following judgments:

Pamela Manmohan Singh vs State 2000 (83) DLT 469; and Kunvarjeet Singh Khandpur vs Kirandeep Kaur & Ors. (2008) 8 SCC 463.

21. Mr Sujoy Kumar, who appeared for Ish Kumar, submitted that he would go by the stand taken by his client in the written statement. It is pertinent to note that on 06.09.2010 Ish Kumar was proceeded ex-parte; nevertheless his counsel was allowed to make submissions.

22. Mr Jagdev Singh, who appeared on behalf of Ashwani Kumar, argued that the Will dated 03.05.1975 (Ex. D2/W1/1) was a genuine document which conformed to the provisions of Section 63(c) of the Succession Act and Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as the "Evidence Act"). He submitted that provisions of Section 63(c) of the Succession Act require that a valid Will should have been signed by the executants in the presence of the witnesses. The witnesses, in turn, should append their signatures in the presence of the executant or, the witness, at least, should receive confirmation from the executant that the Will has been signed by him or bears his mark. Mr Jagdev Singh submitted that it was sufficient to proof of execution of a Will if, one of the witnesses were to affirm this fact. This requirement of law, according to Mr Jagdev Singh, was fulfilled completely as was evident from Tuteja's testimony. Mr Jagdev Singh submitted that Tuteja in his testimony had consistently deposed that D.R. Chopra had executed the Will dated 03.05.1975 (Ex. D2/W1/1) without any pressure or coercion, and that he was in a sound disposing mind at the time of execution of the Will. Mr Jagdev Singh submitted that Tuteja in his testimony had adverted to the effect that D.R. Chopra had signed the Will in his presence. On Tuteja being shown the Will dated 03.05.1975 (Ex. D2/W1/1), he had identified the signatures of D.R. Chopra and his own signatures on the said Will. He had also gone on to say that the other witness, i.e., Surender Singh had also signed the Will dated 03.05.1975 (Ex. D2/W2/1). As regards the relationship of Ashwani Kumar with his parents, Mr Jagdev Singh submitted that the same was not relevant. Nevertheless, Mr Jagdev Singh tried to prove by alluding to the photographs of Ashwani Kumar's marriage to demonstrate that the parents of Ashwani Kumar were present at his marriage, since he enjoyed a cordial relationship with them. On the aspect of relationship of his sibling with his parents Mr Jagdev Singh laid stress

that, on the other hand, the relationship of the plaintiff/ Vinod Prabha was less than cordial as she had married against the wishes of her parents. For this purpose he relied upon the testimony of his other siblings including Ish Kumar and Indu Sehgal.

REASONS

23. I have perused the pleadings, the evidence on record and also heard submissions of counsel for parties. The first aspect of the case which requires determination is whether the South Patel Nagar property (which is essentially the bone of contention) was a self-acquired property of D.R. Chopra; as against the stated stand of the plaintiff/ Vinod Prabha that it was an ancestral property. If it was so, then the second aspect which would require determination would be as to whether late D.R. Chopra had executed Will dated 03.05.1975 (Ex. D2W1/1). As regards the all other assets, that is, jewellery and fixed deposits, there is no clear evidence on record. There is a carbon copy of a letter written by Savitri Devi to the bank with regard to her fixed deposits.

24. On the aspect as to whether the South Patel Nagar property is an ancestral property or not, the plaintiff, it appears, has not been able to discharge her onus. In the plaint a stand has been taken by the plaintiff/ Vinod Prabha that her father acquired the South Patel Nagar property against “verified claims” in lieu of ancestral property which was left behind in West Pakistan on the family’s migration to India pursuant to partition. This stand was somewhat subtly changed during the course of her examination wherein, it was suggested that South Patel Nagar property was purchased from compensation received against ancestral property. Even though Ish Kumar supported the stand of the plaintiff/ Vinod Prabha, in his written statement, in his examination-in-chief he took an about turn, and virtually supported the stand of Ashwani Kumar, which, of course, he claimed was on account of the fact that he was not aware of the fact that a Will dated 03.05.1975 existed, when he signed, verified and lodged the written statement. He went on to say that only on becoming aware of the existence of the Will during court proceedings did he chose to support the stand taken by Ashwani Kumar that Will dated 03.05.1975 (Ex. D2W1/1) bore the signatures of his father D.R. Chopra. Indu Sehgal in

her testimony has taken the stand that the South Patel Nagar property was bought out of the compensation received against the ancestral property.

24.1 It is important to note that Ashwani Kumar, during the course of his cross-examination, had produced the original of conveyance deed dated 30.08.1972. A perusal of the document would show that what was bought by D.R. Chopra was a super-structure built on a leased land. The recitals to the said conveyance deed dated 30.08.1972 indicate that the purchaser, that is, late D.R. Chopra had declared himself as a displaced person; and that neither his wife nor his dependants owned or had acquired any house or site in the Indian Union. If this document, which was produced by Ashwani Kumar, is to be believed, it appears that the building and the land underneath, which is the South Patel Nagar property, was sold by the Government of India to late D.R. Chopra in his capacity as a 'displaced person'. What the document does not indicate is: whether or not the said conveyance deed executed was in lieu of property left behind, what is now Pakistan, by the Chopra family. Based on the evidence on record, it is not possible to come to a conclusion that the South Patel Nagar property was not acquired by D.R. Chopra out of his own funds though in his status as a 'displaced person'. Therefore, the assertion of the plaintiff that the South Patel Nagar property was an ancestral property, is not proved. The only other conclusion that one can draw is that the South Patel Nagar property was the self-acquired property of late D.R. Chopra.

25. This brings me to the second aspect of the matter as to whether Will dated 03.05.1975 (Ex. D2W1/1) was a genuine Will. I would have to first deal with the objections raised by Mr Sachdeva that no evidence with regard to the Will dated 03.05.1975 (Ex. D2W1/1) could have been allowed or, therefore, by logical corollary could be led by him, in view of the fact that Ashwani Kumar had not obtained the probate of the Will within the limitation prescribed. In this regard, let me refer to the statement of law and the judgment of this court in the case of *Shri Rajan Suri & Anr. vs The State & Anr. 125 (2005) DLT 433* wherein it is observed and therefore firmly established that in Delhi probate of the Will made by a Hindu, Buddhist, Sikh or Jain is not necessary; in

case it relates to an immovable property situate in Delhi and that the Will can be set up even in collateral proceedings. See observations made in paragraphs 31 & 32. It appears that the judgment of the Division Bench of Punjab & Haryana High Court in the case of *Bihari Lal Ram Charan vs Karam Chand Sahni & Ors. AIR 1968 P&H 108* and of this court in *Sardar Prithipal Singh Sabharwal vs Jagjit Singh Sabharwal 1996 III AD (Del.) 281* has not been brought to the notice of the learned Single Judge in the case of *Gurmeet Singh Chopra (supra)*. As regards the period of limitation being attracted to the probate proceedings, in my view, those judgments would apply where a litigant initiates proceedings to seek a probate. There is no limitation prescribed where a litigant sets up a Will to defend a claim with respect to the estate of the deceased of which the litigant claims, he is a beneficiary. In my view the two judgments cited by Mr Singhal are, therefore, distinguishable.

26. The contesting defendants in this case (especially Ashwani Kumar) even though they did not seek a probate of the Will (Ex. D2/W1/1), they pivoted their case on the said Will. Therefore, genuineness of the Will (Ex. D2/W1/1) will have to be examined. In the instant case the only witness, who has been examined with regard to the genuineness of the Will (Ex. D2/W1/1), is one Tuteja.

26.1 Before I come to Tuteja's testimony, I wish to add something qua the document, i.e., Will dated 03.05.1975 (Ex. D2W1/1). I have seen the original of the Will dated 03.05.1975 (Ex. D2W1/1) filed in court. A bare perusal of the original would show that it is firstly, a typed document and not a holographic Will; secondly, at the time of signing of the Will dated 03.05.1975 (Ex. D2W1/1) D.R. Chopra was evidently aged approximately 63 years, and was residing at H-16, Malviya Nagar, New Delhi – 110 017; the signatures of D.R. Chopra are appended at a point where there is a small tick mark (√); the signatures of the two witnesses, i.e., Tuteja and Surender Singh are almost squeezed in. The address of Tuteja due to lack of space (since the paper is not of its original full scape size) spills underneath the address of Surender Singh. Surender Singh's name and address is printed parallel to his signatures, whereas in the normal

course, I would have expected that the name and address would have been printed underneath the signature. The entire getup of the document does not instill any confidence in me that the Will dated 03.05.1975 (Ex. D2W1/1) is genuine.

26.2 This apart the testimony of the witnesses is nebulous to say the least. Tuteja claims that he was working as UDC in 1975, in the same department where late D.R. Chopra was working. The Will dated 03.05.1975 (Ex. D2W1/1), produced by Ashwani Kumar, itself shows that D.R. Chopra was 63 years of age and well beyond the age of retirement. Tuteja in his testimony has also conceded that he did not have much interaction with the Chopra family. Therefore, for the Chopra family to choose him as the witness seems rather curious in the circumstances.

26.3 What lends credence to the submissions; as regards the genuineness of the Will dated 03.05.1975 (Ex. D2W1/1), by the counsel for the plaintiff, is that, Ashwani Kumar in his testimony categorically stated that his mother Savitri Devi made him aware of the instant case, in 1987. What has perplexed me is: why did Ashwani Kumar wait for eight long years to produce the said Will dated 03.05.1975 (Ex. D2W1/1). It is not disputed that on 18.05.1994 defendant nos. 2 to 4, which included Ashwani Kumar, who, at the relevant time was defendant no. 3, was proceeded ex-parte. The said order dated 18.05.1994 qua Ashwani Kumar was recalled on 07.11.2005. The written statement was filed by Ashwani Kumar only in December, 2005. The reference to the Will dated 03.05.1975 (Ex. D2W1/1) was made in the written statement for the first time. In his testimony Ashwani Kumar tried to give an explanation for the delay in revealing the existence of the Will by stating that he became aware of the instant case only when he returned to India on the death of his mother, which is when, he was informed about the case. It is pertinent to note, as noticed hereinabove, that his mother was murdered, and he attributed information about the instant case to the ACP, who was looking into the investigation in the criminal case. This stand in cross-examination was clearly in contradiction to what I have noted above, in as much as in response to a question, Ashwani Kumar stated that his mother made him aware of the case in 1987. Ashwani

Kumar, in his deposition in court, tried to portray that since his mother was staying in the South Patel Nagar property, he did not want to rake up the issue of the existence of the Will. His attempt to show that there was complete bonhomie between him and his parents seemed phony when examined in the light of letters written by the father, i.e., D.R. Chopra to his daughter Indu Sehgal; wherein he records in detail the miseries met out to him, by Ashwani Kumar, which included physical abuse. A short extracts from these letters would demonstrate the hollowness of the explanation given by Ashwani Kumar, in court, as to why he did not take recourse to any legal proceedings. These letters also demonstrate that the relationship that the parents shared with Ashwani Kumar was less than happy. As a matter of fact they were miserable. The following extracts from the letters being relevant is set out hereinbelow:

Letter dated 01.05.1981: From D.R. Chopra to Indu Sehgal:

“.... As all the expenditure involved there was from Ashwani, Ashwani gave severed (s.i.c. severe) beating on the 5th April at around 3.45 p.m. to both of us. After two hours he regrets the happenings...”

Letter dated 04.09.1981: From D.R. Chopra & Savitri Devi to Indu Sehgal:

D.R. Chopra

“....Ashwani heard four to five minutes saying that he cannot accommodate me even at the time of illness as advised by the doctor and send me a cheque for Rs. 300....

.....I fell ill as I was beaten by Ashwani on my head. He told me that he will kill me one day after

Ish gave green signal to Ashwani for his marriage with this girl, which I did not like it. Due to that I had been beaten and threatened for dire consequences. One has to die sooner or later, this is why I do not worry....

Savitri Devi

...I was also ill..... Ashwani had beaten me, there is still pain in my head..... (original was in Hindi and this is translated version)”

Letter dated 02.05.1982: from D.R. Chopra to Indu Sehgal

“....Your Biji is still not in a position to write a letter due to brain injury which she received from Ashwani last year. She will write you after she had CT scan on the 4th June, 1982....”

Letter dated 15.03.1982: D.R. Chopra to Indu Sehgal:

“..... When you are coming. There are many things to be discussed before leaving India. I have to dispose of immovable property or legally endorsed in the name of Neeraj. Then we can stay with you. The cost of this house is Rs eight/nine lakhs. Everything will be discussed when you will be here. If we come to America we will stay with you and do some business as suggested....”

28. On an appreciation of evidence what comes through is that, at some point of time a document was typed out purporting to be a Will. The tick mark (√) on the document is indicative of the fact that D.R. Chopra was asked to sign at a particular place. This document, it appears, was not fully executed in accordance with the law. Since Ashwani Kumar has produced the said document, it was obviously in his possession. There is no explanation, which is evident on an ocular examination of the Will dated 03.05.1975 (Ex. D2W1/1), that the lower part of the document has been hastily torn. The manner in which the signatures of the two witnesses are appended in the document also create suspicion as regards the genuineness of the document. The testimony of Tuteja also does not inspire confidence. There are gaps in the testimony in so far as Tuteja claims that he was working as UDC in the same department as late D.R. Chopra, but at the same time failed to recollect as to what was the designation of late D.R. Chopra. As indicated above, on 03.05.1975 as per the document produced by Ashwani Kumar, late D.R. Chopra had already attained the age of 63 years, therefore, for Tuteja to say that late D.R. Chopra was his senior in the same department, in which he was working, obviously is not an accurate recollection of events. Mr Jagdev; the learned counsel, tried to explain these inconsistencies by adverting to the fact that the witness was in his 80s. While this aspect in any other circumstance could have been appreciated, in the context of the facts and the evidence obtaining in the instant case this lapse seems crucial especially when the entire edifice of Ashwani Kumar's defence is based on the evidence of Tuteja. A Will, as is well known, breaks natural line of succession to the estate of a deceased; the courts are, therefore, required to examine the evidence adduced to support the factum of its

execution with great care and caution. In my opinion, a holistic appreciation of the evidence on record does not have me believe that the said document, i.e., Will dated 03.05.1975 (Ex. D2W1/1) in issue, contemporaneously bore the signatures of late D.R. Chopra along with those of the witnesses whose names and signatures are appended therein, i.e., Tuteja and Surender Singh.

29. In view of the aforesaid, the issues in the case (though not in the order in which they are numbered) are answered as follows:

Issue No. 1:

The plaintiff has not been able to discharge the onus of proof that the South Patel Nagar Property was an ancestral property and that it belonged to the joint Hindu family. The issue is answered against the plaintiff.

Issue No. 2:

The plaintiff has not been able to discharge onus even with regard to this issue, that is, that the deceased has left behind immovable properties as mentioned in Annexure 'A' Except for a carbon copy of the document (marked DF) which is a letter evidently written by Savitri Devi to the Manager of United Commercial Bank. There is no other proof of any other property. Even the said letter (Marked DF) refers to certain fixed deposit receipts (FDR) with the State bank of India, South Patel Nagar wherein, a mandate has been given to the Manager of the United Commercial Bank, South Patel Nagar branch to collect proceeds of the said FDRs and credit the same into her savings bank account. There are no details of the FDRs and there is no evidence or documentation produced to demonstrate that FDRs, were maintained with United Commercial Bank as also with regard to monies, if any, in the savings bank account of Savitri Devi. In these circumstances, even with regard to this issue the plaintiff has not been able to discharge her onus. The issue is decided against the plaintiff.

Issue No. 5:

For the reasons given hereinabove, this issue is decided against Ashwani Kumar. He has not been able to discharge the onus placed on him in that regard.

Issue No. 6:

Consequently, issue no. 6 will also meet the same fate. Ashwani Kumar, therefore, will not acquire sole and exclusive right to the South Patel Nagar property.

Issue No. 3:

The consequent result will be that South Patel Nagar property is declared to be the self-acquired property of late D.R. Chopra; There being no dispute as regards the fact that the plaintiff/Vinod Prabha is a legal heir of D.R. Chopra, she would be entitled to seek partition and separate possession of the South Patel Nagar property.

Issue No. 4:

In view of the fact that the plaintiff/ Vinod Prabha alongwith Ish Kumar, Ashwani Kumar and Indu Sehgal have an equal share in the estate of late D.R. Chopra, each of them are entitled to a 1/4th share in the estate of late D.R. Chopra. From the evidence on record the only property which is available as part of the estate of late D.R. Chopra, is the South Patel Nagar property. Accordingly, as prayed by the plaintiff/Vinod Prabha a preliminary decree is passed declaring thereby that: the plaintiff along with the defendants herein shall have a 1/4th share in the estate of late D.R. Chopra.

30. By order dated 07.11.2005 Mr Ritesh Mohindra was appointed as the commissioner-cum-receiver of the South Patel Nagar property. From a perusal of the record the property is still in possession of the court commissioner. Accordingly, Mr Ritesh Mohindra is now directed to file a report as to whether the property can be divided by metes and bounds. The fee in this regard would be determined after the report is filed by the court commissioner. The court commissioner shall file his report within four weeks from today.

RAJIV SHAKDHER, J

NOVEMBER 26, 2010

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