



2026:DHC:8852



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

% **Reserved on: 21st August, 2026**

Pronounced on: 07th October, 2026

Uploaded on: 07th October, 2026

CNR No. DLHC010216472026

+ **RFA No. 496/2026, CM APPL. 32444/2026**

1. **RAGHUNATH (NOW DECEASED)**
THR LR

(a) **MRS. RITU MALIK**
W/o Sh. Sandeep Malik
R/o House No. 1, Old Market,
Ramesh Nagar, near Chacha Nehru Park,
New Delhi-110015

2. **SH. BASANT KUMAR**
S/o Late Sh. Raghunath
R/o B-107, Subhadara Colony,
Sarai Rohilla, New Delhi-110035

....Appellants

Through: Mr. Madan Lal Sharma, Mr. Abhay
Singh, Advocates

versus

1. **SH. BHARAT BHUSHAN (DECEASED)**
THROUGH LRS

1.(a) **SMT. SUNITA**
W/o Late Sh. Bharat Bhushan

1.(b) **SH. MANAV MANCHANDA**
S/o Late Sh. Bharat Bhushan

Both 1.(a) & 1.(b) residents of:
202, Aradhna Apartment,



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Sector13, R.K. Puram, Delhi-110066.

1.(c) **SMT. SHRADHA NARANG**

W/o Hemant Narang

R/o Flat No. 107, Pragati Apartment,

Paschim Vihar, Delhi-110063

.....Respondents

Through: Mr. Rahul Madan, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present *Regular First Appeal* under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*), has been preferred by the Appellants/Defendants, assailing the Judgment and part Decree dated 28.02.2026 passed by the learned District Judge, whereby *the Suit of the plaintiff was partly decreed for possession of property bearing No. B-107, Subhadra Colony, Sarai Rohilla, Delhi-110035, except one shop forming part thereof, under Order XII Rule 6 of the CPC.*

2. The Plaintiff, *Mr. Bharat Bhushan*, had instituted **CS DJ No.491/2019 seeking possession** of property bearing No. B-107, Subhadra Colony, Sarai Rohilla, Delhi-110035 (*hereinafter referred to as the "suit property"*), along with **recovery of damages/mesne profits**, for its use and occupation.

3. The **facts in brief**, as stated in the Complaint, are that *Mr. Roshan Lal*, father of the Plaintiff, was the sole and absolute owner of the *suit property*.

4. *Mr. Roshan Lal* had executed his last Will dated 03.03.1997, whereby in respect of the *suit property*, the Will recorded that it was his self-acquired property and that it "*consists of one shop size (7' × 7') on ground floor*", which was occupied by his grandson, Defendant No.2, *Mr. Basant Kumar*,



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son of defendant No.1, *Mr. Raghunath*. It thereafter provided that "*my above said property*" would, after his death, *devolve upon the Plaintiff, to the exclusion of all his other legal heirs and successors*.

5. Subsequently, Mr. Roshan Lal expired on 23.09.1998 and the Plaintiff pleaded that by virtue of the said Will, he became the sole and absolute owner of the suit property.

6. The Plaintiff filed **Probate Petition No. 12/18/99** in respect of the Will dated 03.03.1997, which was contested by Defendant No. 1, *Mr. Raghunath*, brother of the Plaintiff. The Petition was allowed by the learned Additional District Judge, *vide* Order dated 19.05.2008. Defendant No. 1 challenged the said Order before this Court, in **FAO No. 284/2008**, wherein the matter was remanded to the Trial Court *vide* Order dated 17.01.2018.

7. After recording further evidence and hearing the parties, the learned Additional District Judge ***granted Letters of Administration with the Will annexed in favour of the Plaintiff, vide Order dated 02.04.2018. The said Order was not challenged and thus, attained finality.***

8. The Defendant No. 1, *Mr. Raghunath*, is the brother of the Plaintiff, while *Mr. Basant Kumar*, Defendant No. 2, was the son of Defendant No.1 who were claimed to be in unlawful possession of the suit property. The Plaintiff asserted that no longer wished the Defendants to remain in the suit property and, consequently, served a Legal Notice dated 11.02.2019 upon them on 16.02.2019, asking them to remove their belongings and hand over its vacant and peaceful possession, on or before 28.02.2019. Further, in the event of their failure to vacate the suit property within the prescribed period, the Defendants would be liable to pay damages for its use and occupation at



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the rate of Rs.30,000/- per month with effect from 01.03.2019 until the delivery of vacant possession.

9. Despite service of the Legal Notice, the Defendants neither gave any reply nor vacated the suit property.

10. The Plaintiff, therefore, instituted **the Suit seeking possession**, Rs.80,000/- towards **damages/mesne profits** for the period from 01.03.2019 until the institution of the Suit, and **future damages** at the rate of Rs.30,000/- per month, until the delivery of possession.

11. *Upon service of summons, the Defendants entered appearance.*

12. An Application by Defendant No.2 Basant Kumar was filed for appointment of a guardian for and on behalf of his father as it was asserted that Defendant No.1 Shri Raghunath had been suffering from dementia and his condition had turned from bad to worse in June, 2019. He had completely lost control of his mental cognitive faculties and does not possess a sound disposing mind. *While the Application was pending, the Defendant No.1 died intestate on 25.11.2019.*

13. His legal representatives, namely Defendant No. 2, who was already a party to the Suit, and his daughter, Ms. Ritu Malik, were brought on record, *vide* Order dated 28.11.2022. The Written Statement filed by Defendant No. 2. She appeared in the proceedings along with her Counsel.

14. Defendant No. 2, Sh. Basant Kumar in his **Amended Written Statement**, took the preliminary objection that he was a tenant in respect of one shop forming part of the suit property, at a monthly rent of Rs.200/- and, therefore, the Suit, insofar as it pertained to the said shop, was barred under



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Section 50 of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the "DRC Act"*).

15. It was further asserted that, except the said shop, the suit property was a joint and undivided property, wherein Defendant No.1 had a 1/4th undivided share and Defendant No.1 was in lawful possession. Consequently, the appropriate remedy available to the Plaintiff, was to seek partition of the suit property.

16. Furthermore, contrary to Order VII Rule 3 of the CPC, the suit property had not been correctly described and the Site Plan annexed to the Plaint, was also incorrect. The Plaintiff had concealed material facts and had not approached the Court with clean hands. The objections were also taken regarding improper valuation and insufficiency of court fees, besides the absence of a cause of action, rendering the Plaint liable to be rejected under Order VII Rule 11 of the CPC. Moreover, *Mr. Kuldeep Raj Manchanda and Ms. Saroj Bajaj*, respectively are also the son and daughter of Late Mr. Roshan Lal, who were stated to be necessary and proper parties, who had not been impleaded in the present Suit.

17. *Defendant No. 2 further pleaded* that, while he occupied the shop as a tenant, he was in possession of the remaining suit property as a co-owner to the extent of an undivided 1/8th share.

18. ***On merits***, it was stated that Late Mr. Roshan Lal, in addition to the suit property, was also the owner of Flat No. 202, Aradhana Apartments, Sector-13, R.K. Puram, New Delhi. Late Mr. Roshan Lal had great love and affection for Defendant No. 2, his grandson, and with a view to settle him,



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had let out one shop forming part of the suit property to him, in the year 1995 at a monthly rent of Rs.200/-.

19. Defendant No. 2 had since been occupying the said shop as a tenant and carrying on the business of an aluminium fabricator, as the sole proprietor of Swastik Aluminium. An electricity connection was also installed in his name, with the consent of Late Mr. Roshan Lal.

20. It was asserted that under the Will dated 03.03.1997, Late Mr. Roshan Lal had bequeathed to the Plaintiff only the said shop, which was under the lawful tenancy and occupation of Defendant No.2, and not the entire suit property. By operation of the Will, the Plaintiff became the landlord only in respect of the tenanted shop, which the Defendant No. 2 has continued to occupy, as a tenant at the monthly rent of Rs.200/-. According to Defendant No. 2, the language of the Will was clear and unambiguous and *conferred ownership upon the Plaintiff, only in respect of the shop forming part of the suit property.*

21. Except for the tenanted shop, the remaining suit property was claimed to be the joint and undivided property of the four legal heirs of Late Mr. Roshan Lal, *namely the Plaintiff, Defendant No. 1, Mr. Kuldeep Raj Manchanda and Ms. Saroj Bajaj*, each having an undivided 1/4th share therein. Defendant No. 1 was stated to be in exclusive possession of the said remaining portion, as one of its co-owners.

22. In respect of Flat No. 202, Aradhana Apartments, the Will separately conferred a 50% share upon Mr. Kuldeep Raj Manchanda, a 30% share upon Defendant No. 1 and a 20% share upon the Plaintiff. Defendant No. 1



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claimed to be in possession of one room in the said Flat, along with the right to use the kitchen and drawing room in common.

23. Late Mr. Roshan Lal initially resided in the suit property with his wife and children. In 1990, the Plaintiff and Defendant No. 1 shifted to Flat No. 202, Aradhana Apartments, at the instance of Late Mr. Roshan Lal, while Mr. Kuldeep Raj Manchanda and his family, continued to reside with their parents in the suit property.

24. Owing to disputes in the family, Late Mr. Roshan Lal shifted Mr. Kuldeep Raj Manchanda and his family to the R.K. Puram Flat in 1995 and called Defendant No.1 and his family back to the suit property. Defendant No.1 thereafter, resided in the suit property with his parents, except in the shop which had been let out to Defendant No. 2.

25. Defendant No. 1 pleaded that he had provided his parents with all possible care, comfort, and support. Subsequently Late Mr. Roshan Lal died on 23.09.1998 and his wife, Ms. Satyawati, died on 28.09.2008. After her demise, Defendant No.1 remained in exclusive possession of the suit property, except the tenanted shop, as a co-owner having an undivided 1/4th share therein.

26. Disputes arose among the legal heirs after the demise of Late Mr. Roshan Lal, in respect of the properties left by him. Since joint possession of the properties was stated to be no longer feasible, Defendant No. 1, through his next friend, had issued a Legal Notice seeking partition of the suit property, except the tenanted shop, as well as Flat No. 202, Aradhana Apartments, by metes and bounds.



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27. Subsequently, Defendant No. 1 died intestate on 25.11.2019 and was survived by his son Defendant No. 2, *Basant Kumar* and his daughter, *Ms. Ritu Malik*. Each of them consequently inherited an undivided 1/8th share in the Suit Property. Defendant No. 2 continued to occupy the shop as a tenant and came into possession of the remaining suit property as one of its co-owners. *Ms. Ritu Malik*, who resided at her matrimonial home, was also stated to visit and stay in the suit property.

28. The Defendant No. 2, thus, denied any liability to deliver possession of the shop; his tenancy at a monthly rent of Rs.200/- being protected under the DRC Act. He also denied any liability to deliver possession of the remaining suit property, which he occupied as a co-owner.

29. The service of the Legal Notice dated 11.02.2019, was denied. The demand for use and occupation charges at the rate of Rs.30,000/- per month with effect from 01.03.2019, was also disputed as being illegal and unjustified. *The Suit was, accordingly, sought to be dismissed.*

30. Subsequently, the **Plaintiff filed an Application under Order XII Rule 6 read** with Section 151 of the CPC, seeking a decree of possession in respect of the suit property, excluding the shop forming part thereof.

31. The Application was premised on the Order dated 02.04.2018 in the Probate proceedings and the *consequent Letters of Administration dated 08.04.2018*. The Letters of Administration recorded that the Plaintiff was entitled to a 20% share in Flat No. 202, Aradhana Apartments, and the “*complete share*” in the Suit Property. Since Defendant No. 1 had contested the probate proceedings but had not challenged the final Order, it was



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submitted that the grant had attained finality and operated as a *judgment in rem*.

32. The Plaintiff further submitted that the Defendants did not dispute the execution or validity of the Will dated 03.03.1997 and that the only controversy concerned the extent of the bequest, made thereunder. According to the Plaintiff, this controversy already stood concluded by the grant of Letters of Administration in respect of his complete share in the suit property. Since the alleged tenancy of Defendant No. 2 in the shop required adjudication, *the relief sought in the Application was confined to possession of the remaining suit property, excluding the said shop.*

33. ***Defendant No. 2 opposed the Application*** on the ground that there was no clear, unambiguous or unconditional admission of the Plaintiff's title, to the entire suit property.

34. It was further submitted that the jurisdiction of a Probate Court was confined to determining the genuineness and validity of the Will and did not extend to adjudicating title to the property forming part of the testamentary estate. Under the Will dated 03.03.1997, the Plaintiff had inherited only the *shop measuring 7' × 7'*, while the remaining suit property continued to be the joint and undivided property of the legal heirs of Late Mr. Roshan Lal.

35. The question whether the remaining suit property belonged exclusively to the Plaintiff or jointly to the parties, required trial and could not be decided under Order XII Rule 6 of the CPC.

36. The ***learned District Judge***, considered the rival pleadings of the parties and observed that the Defendants had admitted that Late Mr. Roshan Lal was the absolute owner of the suit property that he had executed the Will



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dated 03.03.1997; and that Letters of Administration with the Will annexed had been granted in favour of the Plaintiff, *vide* Order dated 02.04.2018. *The sole controversy was, therefore, the interpretation of the bequest concerning the suit property.*

37. After referring to the principles governing a judgment on admissions and the construction of Wills, as explained in Rajiv Ghosh v. Satya Narayan Jaiswal, Navneet Lal alias Rangji v. Gokul and Bay Berry Apartments (P) Ltd. v. Shobha, the learned Trial Court held that the Will had bequeathed the entire suit property to the Plaintiff. The testator had not employed any limiting expression such as “*only the shop*” or “*the said shop alone*” and the bequest was not limited to the shop situated on the Ground Floor, as was asserted by the Defendant. It was concluded that the bequest pertained to the entire suit property in favour of the Plaintiff.

38. **Consequently, the Application under Order XII Rule 6 of the CPC was allowed and the Defendants were directed to hand over vacant and peaceful possession of the suit property, excluding the shop forming part thereof, as shown in red in the Site Plan, within two months from the date of the impugned Judgment.**

39. **Aggrieved by the impugned Judgment and part Decree, the Appellants have preferred the present Regular First Appeal.**

40. The **grounds of challenge** are that the learned Trial Court misconstrued the Will dated 03.03.1997 executed by Late Mr. Roshan Lal. Reliance has been placed on Bay Berry Apartments (P) Ltd. v. Shobha, (2006) 13 SCC 737, to submit that where the recitals of a document are clear and unambiguous, they must be given their literal meaning.



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41. Late Mr. Roshan Lal initially described himself as the owner of property bearing No. B-107, Subhadra Colony, Sarai Rohilla, Delhi. However, in the immediately succeeding sentence, he stated that “*the said property consists of one shop size (7' × 7') on ground floor*”. The Appellants submit that these words identify and limit the subject matter of the bequest in favour of the Plaintiff, to the said shop and not the entire suit property.

42. The testator in truth, fact and substance, had only bequeathed the *shop admeasuring 7' x 7'*, to the Plaintiff. However, the learned Trial Court has erred in appreciating the clear and unambiguous word used by the Testator, in the Will.

43. In the alternative, it is urged that if the reference to property bearing No. B-107 and its subsequent description as consisting of one shop are treated as irreconcilable, the latter expression must prevail, under Section 88 of the Indian Succession Act, 1925. Reliance in this regard has been placed upon Balwant Kaur v. Chanan Singh, (2000) 6 SCC 310; (Kunwar) Rameshwar Bakhsh Singh v. (Thakurain) Balraj Kuar, AIR 1935 PC 187; Navneet Lal alias Rangi v. Gokul, (1976) 1 SCC 630; Kaivelikkal Ambunhi (Dead) by LRs v. H. Ganesh Bhandary, (1995) 5 SCC 444; and Mary Chacko v. Rinoy Martin, 2017 SCC OnLine Ker 6526.

44. In Kaivelikkal Ambunhi's case (supra), it was held:

"3. The rules of interpretation of the Will are different from the rules which govern the interpretation of other documents say, for example, a sale deed or a Gift Deed or a Mortgage Deed or, for that matter, any other instrument by which interest in immovable property is created. While in these documents if there is any inconsistency between the earlier or subsequent part or specific clause inter-se contained therein the earlier part



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will prevail over the later part as against the rules of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part on the principle that in the matter of "Will", the testator can always change his mind and creates another interest in place of the bequest already made in the earlier part or an earlier occasion, undoubtedly it is the last Will which prevails.

*4. A Will may contain several clauses and later clause may be inconsistent with the earlier clause. In such a situation, the last intention of the testator is given effect to and it is on this basis that the later clause is held to prevail over the earlier clause. This is regulated by well-known maxim "cum duo inter se pugnancia reperiuntur in testamentis ultimum ratum est" which means that if in a Will there are two inconsistent provisions, the later shall prevail over the earlier (See *Hammond v. Treharne* 1938 (3) All England Reports 303)".*

45. The finding of the learned Trial Court that the expression "*my above said property*" necessarily referred to the entire property bearing No. B-107 is, therefore, assailed as erroneous. The further finding that the reference to the 7' × 7' shop was merely descriptive and not restrictive of the bequest, is also challenged on the ground that the testator had expressly identified both, the shop and its dimensions.

46. The Appellants further rely upon the manner in which the testator dealt with Flat No. 202, Aradhana Apartments, by conferring a 50% share upon Mr. Kuldeep Raj, a 30% share upon Mr. Raghunath and a 20% share upon Mr. Bharat Bhushan. According to them, a holistic reading of the Will, applying the *armchair rule*, it is evident that the testator intended to confer upon the Plaintiff only the 7' × 7' shop and did not intend to exclude his



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other sons i.e. *Mr. Raghunath and Mr. Kuldeep Raj* from the remaining suit property.

47. A reference is also made to the circumstances stated in the Written Statement, including that Defendant No. 1 had shifted from the R.K. Puram Flat to the suit property in 1995 at the instance of Late Mr. Roshan Lal and thereafter, resided there with his parents. Following their demise, Defendant No. 1 continued in possession of the suit property, except the shop occupied by Defendant No. 2.

48. More fundamentally, the Appellants submit that no clear, unambiguous and unconditional admission had been made that the entire suit property was bequeathed to the Plaintiff. On the contrary, the Defendants had consistently pleaded that the Will conferred upon the Plaintiff *only the shop measuring 7' × 7'* and that the remaining suit property continued to be jointly owned by the legal heirs of Late Mr. Roshan Lal.

49. It is urged that the learned Trial Court, while reproducing the principles governing Order XII Rule 6 of the CPC, failed to apply them to the facts of the case. The extent of the bequest was the central dispute between the parties and could not have been determined as an admitted fact. If the intention of the testator required consideration of the surrounding circumstances and family arrangements, the issue necessarily required evidence and trial.

50. The power under Order XII Rule 6 of the CPC being discretionary, a decree on admissions could not have been passed where the objections raised by the Defendants went to the root of the Plaintiff's title. The impugned Judgment and part Decree are, therefore, assailed as having



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decided a disputed question of testamentary construction without trial and in the absence of the admission required under Order XII Rule 6 of the CPC. *It is thus, pleaded that the impugned Judgment and Decree is liable to be set-aside.*

51. The Appellant in his **Written Submissions** essentially reiterated the grounds raised in the Appeal.

52. The Respondents in his **Written Submissions**, stated that Defendant No. 1 had contested the probate proceedings, but had not challenged the final Order dated 02.04.2018 granting Letters of Administration with the Will annexed in favour of the Plaintiff._The Judgment in the Probate proceedings, has attained finality.

53. It was submitted that the learned District Judge had correctly appreciated the facts and applied the armchair rule, while construing the Will, without adding to or subtracting from the language employed by the testator.

54. A particular reliance was placed upon the Letters of Administration dated 08.04.2018, which recorded the Plaintiff's entitlement to a 20% share in Flat No. 202, Aradhana Apartments, ***and the "complete share" in property bearing No. B-107, Subhadra Colony, Sarai Rohilla, Delhi.*** According to the Respondents, the Appellants had neither disputed the Will nor challenged the grant made thereunder, and could not subsequently restrict the bequest to the shop alone.

55. The Respondents further submitted that the Will clearly identified property bearing No. B-107 as the self-acquired property of Late Mr. Roshan Lal. The operative expression "*my above said property*" referred to



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the entire property bearing No. B-107, while the reference to the 7' × 7' shop merely recorded its existence and occupation by Defendant No. 2. The absence of words such as “*only the shop*” or “*the said shop alone*”, coupled with the exclusion of all other legal heirs, demonstrated the intention to bequeath the entire property to the Plaintiff.

56. Reliance was placed upon Navneet Lal alias Rangī v. Gokul, (1976) 1 SCC 630, and Bay Berry Apartments (P) Ltd. v. Shobha, (2006) 13 SCC 737, to submit that the intention of a testator must be gathered from a holistic reading of the Will and that clear and unambiguous words must be given their ordinary meaning.

57. The learned Trial Court had, therefore, correctly construed the Will and allowed the Application under Order XII Rule 6 of the CPC.

Submissions heard and the record perused.

58. **The preliminary objection** has been taken by the Appellants, regarding the applicability of Order XII Rule 6 of the CPC, which may be first considered. The Appellants had contended that there were no unambiguous admissions made by the Appellants and that evidence was required to be led, to establish the true intent of the Testator.

59. In the case of Rajiv Ghosh v. Satya Narayan Jaiswal, 2025 SCC OnLine SC 751, the Supreme Court reiterated that the power under Order XII Rule 6 of the CPC is *enabling, discretionary and permissive*. It upheld the principle that where the necessary factual ingredients are admitted, the legal consequence flowing therefrom need not itself be separately admitted. The Court may determine the legal effect of the admitted facts where no further factual adjudication is required. It approved the principle that a



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proposition of law or a legal argument is not required to be pleaded and that it is sufficient if the factual ingredients necessary to attract the applicable legal provision stand admitted. *Admissions contemplated under Order XII Rule 6 may also be express or implied and may be gathered from the pleadings or otherwise.*

60. Therefore, the relevant enquiry under *Order XII Rule 6*, is not whether the Defendant has expressly conceded the Plaintiff's ultimate entitlement to the relief claimed, but *whether the foundational facts necessary for determining such entitlement are admitted or whether any evidence is required for effective adjudication of the foundational facts, before the suit can be decreed.*

61. *The background facts, in the present case, are admitted and not in dispute.* Late Mr. Roshan Lal Manchanda, father of the Plaintiff and Defendant No. 1, Mr. Raghunath, was the exclusive owner of the suit property. He admittedly executed the Will dated 03.03.1997. Letter of Administration with the Will annexed, was granted in favour of the Plaintiff in PC No. 12/18/99 (New No. 12/18), *vide* Judgment dated 02.04.2018, which admittedly was not challenged and has thus, attained finality. *The execution and genuineness of the Will are, therefore, not in dispute and admitted by the Defendant.*

62. The Defendants do not claim any independent title, *dehors* the Will. Their claim of co-ownership in the suit property, is founded entirely upon the interpretation of the terms of the Will, under which the plaintiff has been bequeathed only the shop and the entire property. The learned District Judge



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was, therefore, competent to construe the Will while considering the Application under Order XII Rule 6 of the CPC.

63. The only controversy is in regard to the construction/interpretation of the Will and, more particularly, whether the entire suit property was bequeathed to the Plaintiff or the bequest was confined to the shop measuring 7' x 7' situated on the Ground Floor.

64. The relevant portion of the Will dated 03.03.1997 reads as under:

"I, Roshan Lal S/o Late Sh. Bishan Dass R/o B-107, Subhadra Colony, Sarai Rohilla, Delhi, have attained the age of 80 years and, therefore, make this Will which is final and irrevocable in respect of properties/assets owned and possessed by me.

...

I declare that I own property, residential Flat No. 202, Aradhana Apartments, Sector-13, R.K. Puram, New Delhi. This is my self-acquired property. At present my three sons are living there. Shri Kuldeep Raj, my eldest son is having two bedrooms and a study room which is at present being used as a kitchen by him. My other two sons, Raghunath and Bharat Bhushan are having one bedroom each. They are sharing the kitchen by using it jointly. The drawing/living room is being shared by all my three sons and used jointly by them. However, I bequeath to my sons this property in the following manner to the exclusion of other heirs:—

(i) Shri Kuldeep Raj will get 50% share of this property;

(ii) Shri Raghunath will get 30% share of this property; and

(iii) Shri Bharat Bhushan will get 20% share of this property.

I also own property No. B-107, Subhadra Colony, Sarai Rohilla, Delhi. This is also my self-acquired



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property purchased from my own earnings. The said property consists of one shop size (7' × 7') on Ground Floor, which is presently occupied by my grandson, Shri Basant Kumar S/o Shri Raghunath. I hereby bequeath that my above said property after my death shall go and devolve upon my son, Shri Bharat Bhushan, to the exclusion of all my other legal heirs, successors etc."

65. On a meaningful reading of the clause, it is evident that Late Mr. Roshan Lal first identified the subject matter of the bequest as property bearing No. B-107, Subhadra Colony, Sarai Rohilla, Delhi, and declared it to be his self-acquired property. The reference to the shop on the Ground Floor, which was occupied by his grandson, Mr. Basant Kumar, was made while describing the property and recording the existing state of its occupation.

66. The ***operative part*** immediately thereafter states: ***"I hereby bequeath that my above said property after my death shall go and devolve upon my son, Sh. Bharat Bhushan"***. The expression ***"my above said property"*** is clear and unambiguous and ***plainly relates to property bearing No. B-107, as described in the opening sentence***. Had the testator intended to confine the bequest to the shop alone, he would have used the expression ***"the said shop"*** or ***"the aforesaid shop"***, instead of consciously employing the wider expression ***"my above said property"***.

67. The clause is further qualified by the words ***"to the exclusion of all other legal heirs, successors etc."*** This exclusionary expression leaves no scope to infer that the testator intended the property bearing No. B-107 to devolve intestate upon the plaintiff and the other legal heirs were expressly



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excluded. *The construction suggested by the Appellants, would render these words substantially ineffective and result in partial intestacy, which cannot be accepted, when the language of the Will admits of a harmonious construction giving effect to every expression used by the testator.*

68. *The **Armchair rule**, also does not warrant a different conclusion. The rule permits the Court, while construing a Will, to place itself in the position of the testator and consider the surrounding circumstances, his position and family relationships, but only as an aid to ascertain the intended meaning of the words actually employed. However, they cannot be used to substitute, curtail or rewrite the words of an otherwise unambiguous bequest.*

69. *The separate disposition of Flat No. 202, Aradhana Apartments, in the will, also supports this construction. In respect of the said Flat, the testator specifically demarcated the interests of his three sons by conferring a 50% share upon Mr. Kuldeep Raj, a 30% share upon Mr. Raghunath and a 20% share upon Mr. Bharat Bhushan.*

70. *The testator was, therefore, conscious of the manner in which a restricted or proportionate bequest, was to be expressed. In contrast, while dealing with property bearing No. B-107, he bequeathed “**my above said property**” to the Plaintiff to the exclusion of all other legal heirs, without reserving any portion or share for anyone else.*

71. *The Defendants have tried to create a confusion and sought to displace the plain meaning of the Will, by relying upon the residential arrangements made by Late Mr. Roshan Lal Manchanda for his family. Ms. Saroj Bajaj was married in the year 1965, while the Plaintiff and Defendant No. 1 continued to reside in the suit property, after their marriage. In 1990,*



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Late Mr. Roshan Lal acquired possession of Flat No. 202, Aradhana Apartments, and the Plaintiff and Defendant No. 1 shifted there.

72. Mr. Kuldeep Raj Manchanda and his family continued to reside with the parents in the suit property. However, owing to disputes, Late Mr. Roshan Lal shifted Mr. Kuldeep Raj Manchanda and his family to the R.K. Puram Flat in 1995 and called Defendant No. 1 and his family back to the suit property. Defendant No. 1 thereafter, resided in the suit property with his parents and, following their demise, *continued in its exclusive possession, except for the shop occupied by Defendant No. 2.*

73. The aforesaid narration only demonstrates that Late Mr. Roshan Lal, during his lifetime, made and varied residential arrangements for his family, according to the prevailing family circumstances. Merely because Defendant No. 1 and his family resided with the parents till their demise and continued in possession after their demise, does not confer any ownership rights upon them, when the express testamentary disposition in the Will dated 03.03.1997, bequeathed the suit property was to the Plaintiff. The possession by a family member, howsoever prolonged, cannot by itself displace title acquired under a Will.

74. The reliance placed upon Section 88 of the Indian Succession Act, 1925, and the decisions concerning irreconcilable testamentary clauses, is misplaced. Section 88 applies where two clauses containing testamentary dispositions are so inconsistent, that they cannot stand together. In the present case, there are no two competing or irreconcilable bequests. The reference to the shop is descriptive, while the succeeding sentence contains the operative bequest of “*my above said property*”.



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75. The learned District Judge, therefore, rightly interpreted the Clause to hold that by virtue of this Will, the Plaintiff became the absolute owner of the suit property and not merely the shop situated on the ground floor thereof.

76. Even otherwise, if the argument concerning the latter expression were to be accepted, the last and operative expression used by the testator *is “my above said property”*, and not *“the said shop”*. Thus, the decisions in Balwant Kaur v. Chanan Singh, (2000) 6 SCC 310, and Kaivelikkal Ambunhi (Dead) by LRs v. H. Ganesh Bhandary, (1995) 5 SCC 444, do not advance the case of the Appellants.

77. The Will dated 03.03.1997 thus, clearly bequeathed the entire suit property to the Plaintiff, who became its absolute owner, upon the demise of Late Mr. Roshan Lal. Defendant No. 1 and his family remained in its possession as permissive users, without any ownership interest therein.

78. The alleged tenancy of Defendant No. 2 in respect of the 7' × 7' shop, was expressly kept outside the scope of the Application under Order XII Rule 6 of the CPC. The Plaintiff sought, and the learned District Judge granted, possession only of the remaining portion of property bearing No. B-107. *The disputed tenancy rights in the shop were, therefore, left open for adjudication in the Suit.*

79. Consequently, the learned District Judge rightly allowed the Application under Order XII Rule 6 of the CPC and directed the Defendants to hand over vacant and peaceful possession of property bearing No. B-107, Subhadra Colony, Sarai Rohilla, Delhi, except the 7' × 7' shop on the Ground Floor occupied by Defendant No. 2.



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80. There is no infirmity in the impugned Judgment and Decree, warranting interference.

81. The Appeal is hereby, dismissed. Pending Applications are also disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

OCTOBER 07, 2026/RS