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

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Judgment Reserved on : April 16,2014
Judgment Pronounced on : May 19, 2014

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RFA(OS) 86/2013

KESHAV CHANDER THAKUR & ANR. Appellants
Represented by: Mr.Sanjay Jain, Senior Advocate
instructed by Mr.Keshav Thakur,
Ms.Noor Anand, Mr.Bhupesh Narula
and Mr.Sarfaraz Ahmed, Advocates.

versus

KRISHAN CHANDER & ORS. Respondents
Represented by: Mr.Samar Singh Kachwaha,
Advocate with Mr.Raghvendra
Mohan Bajaj, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed challenging the order dated May 24,2013 passed by the learned Single Judge whereby the application filed by defendant No.1/respondent No.1 under Order VII Rule 11 CPC, being IA No.13394/2011, was allowed and the plaint was rejected.
2. The appellants filed the suit seeking a decree for partition of properties B-11, Krishna Niwas, West End Colony, New Delhi and 245-A, Puran Nagar, Jammu (Tawi), Jammu and Kashmir and other connected reliefs.
3. It is averred in the plaint that the parties to the present suit are legal

heirs of late Lt.Col.Dina Nath and late Smt.Krishna Thakur. Appellants are legal representatives of their deceased son late Major Puran Chander i.e. the son and widow. Respondents No.1 to 3 are the sons while respondents No.4 to 6 are the daughters of late Lt. Col.Dina Nath and Smt. Krishna Thakur. It is urged that late Lt.Col.Dina Nath from his own funds, funds received from the LIC Policy upon the demise of the father of appellant No.1 and funds received from sale of ancestral properties situated in District Poonch, Jammu and Kashmir constructed the aforesaid two immovable properties. The father of appellant No.1 and husband of appellant No.2 expired in 1965 in the Indo Pak conflict. Based on the above facts, it is averred that each of the respondent and the appellants have 1/7th share in the two properties and hence the suit for partition.

4. Respondent No.1 filed the written statement in the suit stating that there is gross suppression of material facts by the appellants in the plaint. It is stated that on April 21, 1975 Respondent No.3 herein filed a suit for partition titled Suresh Chander versus Lt. Col. Dina Nath and Others before Principal & District Judge, Jammu. Appellant No.1 through appellant No.2, as his guardian was arrayed as a party to the suit. By consent of the parties the suit was decreed. A Local Commissioner was appointed to recommend partition. The Jammu property as per report of the Local Commissioner was divided into three parts, one part falling to the share of respondent No.2, one to the share of Respondent No.3 and one to the share of appellant No.1. The report further stated that the Delhi property would devolve entirely upon respondent No.1. A final decree in terms of the report of the Local Commissioner was passed on March 30, 1976 which has become final and is binding on the parties. The sisters of respondents No. 1 to 3 i.e. respondents No.4 to 6 did not claim any share in the two properties. It is urged that

appellant No.1 has been enjoying the sole exclusive ownership over his separate share of property in Jammu. He has even been collecting rent by letting out different portions of the suit property in Jammu which had fallen to his share in the partition decree. All these facts it is averred have been mischievously and malafidely suppressed in the plaint.

5. Regarding the Delhi property it is further urged that the said property measuring 800 sq.yards was purchased in 1961 by Smt.Krishna Thakur. In 1966 Smt.Krishna Thakur wrote to DDA requesting for transfer of her rights in the said property in favour of respondent No.1. On August 31, 1970 DDA accepted the request of Smt.Krishna Thakur. Accordingly, on December 11, 1970, a perpetual sub-lease was made and executed in favour of Respondent No.1 which was duly registered in accordance with law. It is urged that by virtue of execution and registration of the sub-lease dated December 11, 1970, respondent No.1 become the sole, absolute and exclusive owner of the said property in Delhi. He has been enjoying undisputed ownership rights in the property since 1971. He has let out various portions of the property in accordance with law and has been collecting rents continuously. He has also been paying all relevant statutory government dues and taxes in relation to the said property. The decree of the Jammu Court continued this position.

6. On the basis of the above averments the said written statement raises various pleas i.e. that the plaint filed suffers from gross suppression, the suit is barred by doctrine of resjudicata, this Court lacks jurisdiction to entertain the suit, the suit is hopelessly barred by limitation and appropriate court fee has not been paid. Respondents 2, 3 and 4 to 6 have also respectively filed their written statement. They have supported the stand of respondent No.1.

7. After filing of the written statement the appellant moved an

application IA No.22835 of 2012 under Order VI Rule 17 CPC seeking amendment of the plaint. In the application for amendment it was averred that the appellant was unaware of the alleged partition decree dated March 30,1976 or of the sub-lease dated December 11, 1970 till the same were produced before this Court by defendant No.1 alongwith the written statement. Hence, various amendments are sought in the plaint including addition of prayers to declare decree dated March 30,1976 passed by the District Judge, Jammu, in the suit titled Suresh Chandra versus Lt.Col.Dina Nath and the Local Commissioner's report filed in the suit as void ab initio and to also declare the sub-lease dated December 11,1970 executed by DDA in favour of respondent No.1 as void ab initio and non est.

8. Respondent No.1 also filed the application under Order VII Rule 11 CPC for rejection of the plaint.

9. The learned Single Judge heard arguments on both the applications i.e. application for amendment of the plaint and for rejection of the plaint. By the impugned order the application for rejection of the plaint has been allowed. Regarding the application for amendment, the Court was of the opinion that even if the case set up by the appellant by way of amendment is taken on record the averments in the plaint are farfetched, untenable and unsustainable in law and no purpose would be served in putting the said claim to trial. Rather the order further notes that it would be a disservice to the family settlement of 1976.

10. The learned Single Judge rejected the contention of the appellant that the decree passed by the Jammu Court dated March 30, 1976 is null and void as no guardian was appointed for the appellant who was then a minor. For the said purpose the learned Single Judge relied upon Order XXXII Rule 3A CPC and the Full Bench judgment of the Punjab and Haryana High

Court in the case reported as AIR 1974 P&H 315 Amrik Singh & Anr. vs. Karnail Singh & Ors. and judgment of the Gujarat High Court in the case reported as (2001)2GLR 1348, Sarjubhai Kantilal Patel vs. Bikhubhai Maganbhai Patel. The court was further of the view that the status which had prevailed in the family for the last 35 years should not be permitted to be changed on technicalities. It also noted that the appellant has not been able to dispute that he has been dealing with the Jammu property exclusively as absolute owner without interference from other family members and that similarly other family members have also been dealing with the portion of the property which fell to their share as per family settlement.

11. The learned senior counsel appearing for the appellant has strenuously urged that the impugned order is liable to be set aside. He has urged that the decree of the Jammu Court dated March 30, 1976 is a complete nullity. It has been urged that the first time the appellant came to know about the decree is when the same was mentioned by respondent No.1 in the written statement filed in the present suit and a copy thereof was filed along with the written statement. It is further urged that the distribution of Jammu property as stated in the decree causes prejudice to the appellant as he has got a much smaller percentage as compared to the other members of the family. He has further urged that appellant No.2 was neither made a party to the Jammu suit nor any summons were issued to her on behalf of the minor appellant No.1. She has not signed the vakalatnama and/or authorized anyone to appear on their behalf. The entire proceedings were collusive. No guardian for the minor appellant No.1 was appointed under Order XXXII Rule 3 CPC. It is urged that the impugned order has wrongly taken the knowledge of the appellant of the decree to be 35 years old. Knowledge about the decree of the Jammu Court is from the date of the filing of the written statement. The

same is said to be the position regarding the Delhi property as the appellants learnt about the perpetual sub lease only on filing of the written statement by respondent No.1. It is further urged that Order XXXII Rule 3A CPC is not attracted.

12. Learned counsel appearing for the respondents has strongly refuted the contentions of the appellant.

13. He submits that various documents placed on record by the respondents clearly and unequivocally demonstrate that the appellant had full knowledge about the suit for partition and the decree passed therein on March 30, 1976 by the Jammu court. Reliance is placed on a communication dated March 01, 2007 said to have been written by the appellant to the Deputy Commissioner, Jammu and AEE, Assessing Authority Bahu Plaza, Jammu regarding assessment of House No.245-A, Puran Nagar, Jammu along with which communication the appellant as proof of ownership attached copy of the decree sheet of the District and Sessions Judge, Jammu passed on March 30, 1976 and the partition recommended by the Local Commissioner. As per the respondent these documents were made available based on an application filed under the RTI Act, 2005. It is further urged that when the respondents sought to get a copy of the lease deed executed by the appellant for the Jammu property under the RTI Act, the appellant No.1 objected to the same claiming that there exists no rent agreement which may be valid in law and that the request of the respondent amounts to invasion of his right to privacy. Hence the department concerned did not give a copy of the lease deed to the respondent. It is further urged that the appellant had also attested a photocopy of the Local Commissioner's report based on which the partition had taken place in Jammu court and had handed over the same to respondent No.1. That document has been placed on record in the

present appeal. He further submits that the appellants have been enjoying the portion of Jammu property that has fallen to their share exclusively. They have been renting out the property that has fallen to their share and enjoying the fruits thereof exclusively and cannot back out to claim ignorance about the decree dated March 30, 1976 and the partition effected thereof.

14. On the basis of these documents and conduct of the appellant it is stated that the appellant all along knew about the decree passed by the Jammu court. It is strongly urged that even otherwise appellant No.1 attained majority in 1984. He is a practicing advocate. The present suit filed 26 years after having attained majority is misconceived and nothing but an abuse of the process of the court.

15. It is further urged that it is the case of appellant No.1 himself that his grandfather late Lt.Col.Dina Nath treated him with love and affection and brought him up. It is stated that admittedly the grandfather was also a party to the Jammu Suit. It is inconceivable that he would not have taken care to protect the interest of the appellant. The grandfather is said to have died in 1994, 18 years after the decree was passed. Hence, it is urged that the decree passed by the court is legal and valid.

16. Regarding the West End Property in New Delhi, it is stated that the property was originally allotted to Mrs.Krishna Thakur, the mother of the respondents and grandmother of appellant No.1. In 1966 Smt.Krishna Thakur wrote to DDA requesting that the allotment be changed in favour of respondent No.1. DDA accepted the request of by letter dated August 31, 1970. The perpetual sub-lease was executed and registered in favour of respondent No.1 on December 11, 1970. It is urged that thereafter respondent No.1 has constructed the house and has been in possession of the said property and has been utilizing the same as exclusive owner to the

exclusion of all the brothers and sisters including the appellant. He has also been renting out a part of the property and is exclusively enjoying the rent without any objection or protest.

Learned counsel further submits that none of the other children of late Lt.Col.Dina Nath has any objection whatsoever to the settlement that was worked out and bifurcation of the family estates that has taken place by means of the Jammu decree or otherwise. Hence it is urged that the present suit is an utterly frivolous suit filed at a very belated stage is hopelessly barred by limitation and the impugned order has validly dismissed the same.

17. We will first deal with the challenge of the appellant to the decree passed by the Jammu court dated March 30, 1976. As per the appellant, the decree is null and void as appellant No.2 who was impleaded as a guardian of appellant No.1, who was then a minor, was never served and never entered appearance nor signed any vakalatnama, though the court passed a consent decree. Another contention that is raised, which is presumably a contention in the alternative is that even otherwise there is no compliance of Order 32 CPC which is a mandatory procedure. No application was moved for appointment of a guardian of the minor and no guardian was appointed under Order 32 Rule 3 CPC to represent the minor applicant. Reliance is placed on the judgment of the Supreme Court in AIR 1968 SC 954 Ram Chander vs. Man Singh to contend that if there is violation of the provisions of Order XXXII Rule 3 CPC, the consequent decree passed is void.

18. We will first deal with the first contention of the appellant, namely, that appellant No.2 though a party as guardian of appellant No.1 was never served and neither entered appearance nor signed any vakalatnama. It is strongly contended in the proposed amendment to the plaint that the appellants were not aware of the court proceedings in Jammu at all and were

not represented by anybody.

19. However, having made these averments, the appellants have failed to place on record anything to substantiate the said contentions. The record of the Jammu suit which is placed on record shows a contrary picture. The appellants themselves have placed on record copies of the ordersheets of the hearing that have taken place in the Jammu suit on various dates. These proceedings sheets are in urdu and translated copies have been placed on record. The Court proceedings show the presence being marked for counsel for defendants in the Jammu Suit (which include appellant No.2) on various dates. On 27.3.1976 statements of advocates for the parties are recorded accepting the report of the Local Commissioner appointed to partition the properties. The presence of Mr.Vinod Chopra, Advocate, is noted who has signed as counsel for defendants of the Jammu Suit (including appellant No.2). These documents suggest that appellant No.2 was being represented in court. Appellants have not placed anything on record to even prima facie show that appellant No.2 was not served the summons in the Jammu suit or did not sign the vakalatnama. Official records of court proceedings cannot be brushed aside in this manner 35 years after the decree was passed.

20. Apart from the above infirmity, in our view undisputed facts on record show that the appellants were aware of the proceedings of the Jammu Court. The stand of the appellant on record shows that the appellant has been enjoying the fruits of the decree of the Jammu Court. A categorical averment is made in the written statement of defendant No.1 that the appellant has been enjoying the benefits of the decree since 1984. This averment is further elaborated in reply to IA No.22835/2012 (an application filed by the appellant for amendment of the plaint under Order VI Rule 17 CPC). Respondent No.1 in the said reply has categorically stated that the

appellant have re-constructed the house on the portion of the Jammu property that has fallen to his share and has since the past many decades been renting out the same and collecting rentals to the exclusion of all other parties herein. Reliance is also placed on a document obtained from the District Soil Conservation Officer, Jammu obtained under the RTI Act. Relevant portion of the said reply of respondent No.1 to IA No.22835/2012 reads as follows:-

“1.1 The Plaintiff No.1 re-constructed a house on the said portion and has since the past many decades been renting out the same and collecting rentals to the exclusion of all other parties herein. Apart from other evidence to the plaintiff’s knowledge of the 1976 Jammu Partition Decree, there exists on the record a document, which clearly shows beyond a shadow of a doubt that the Plaintiffs knew about the said decree before filing of the present Suit. This document is a letter obtained under the RTI Act, from a tenant of the Plaintiff No.1, namely The District Soil Conservation Officer, Department of Soil Conservation, Jammu. The said letter is dated 01.03.2007 and bears the signature of the Plaintiff No.1. It is addressed by the said Plaintiff to his tenant, and includes attached therein all relevant documents of the 1976 Jammu Partition Decree, including the final decree sheet, judgment, layout maps etc. The documents obtained from the District Soil Conservation officer, Department of Soil Conservation, Jammu under the RTI Act have already been placed on record and are also attached herein as Annexure R-1 for ease of reference. ...”

21. The appellant in his rejoinder to the said reply has denied carrying out any construction. However, regarding renting out of the property which has fallen to his share and enjoying the benefits thereof he submits as follows:-

“7.... The alleged documents produced by the defendant No.1 under the RTI were not filed by the plaintiffs before the concern Government Authority. The said documents were filed by defendant No.2 who was already in possession of the said documents and had rented the ancestral house to the same department namely District Oil Conservation Office, Jammu

Sometime in year 2006. That in March 2007 the same department took the first floor of Jammu premises on rent which was at the behest of defendant No.2 who prevailed upon the plaintiffs to give the first floor on rent for their stock keeping as the department was short of space and were threatening to leave the said premises and thereafter, the said department used the said premises for a short time. When the department insisted for assessment of the premises it was at the behest of defendant No.2 that the said letter requesting the department to assess the Jammu premises at first floor and along with the proof of ownership which pertains to water bills, election documents and a map of only portion of land that had to be assessed and the actual building map but nothing happened as the Government department shifted out of the said premises while retained the main ancestral house wherein defendant No.2 has been illegally collecting rent till date.”

22. The document in question, namely, the letter which appellant No.1 admits to have sent to the concerned department of the State of Jammu & Kashmir reads as follows:-

“To

- 1) The Deputy Commissioner
Mub-Circular Road,
Jammu.*
- 2) AEE,
Assessing Authority,
Bahu Plaza, Jammu.*

Subject: Assessment of House at 245-A, Puran Nagar, Jammu.

Sir,

My house at 245-A, Puran Nagar, Post Office Lane, Jammu has been given on rent to the Directorate of Soil Conservation Department, J&K District Govt. of J&K and the assessment needs to be carried out now.

Enclosed please find photocopy of papers of Ownership and the maps along with measurement thereto which have been rented out to the Department w.e.f. 15.2.2007.

I request you to kindly assess my house and inform me the due date when your team can inspect and measure the rented portion so that I can send someone to assist you.

Thanking you

*Keshav Thakur
R/o 245-A, Puran Nagar,
Jammu (Tawi),
J&K-180 005.
Tele No.191-2540234*

*CC 1) The Estate Officer,
Directorate of Soil Conservation Department,
J&K District-Jammu:- For information and for getting
the house assessed.
Encl- 1) Ownership Papers.
2) Maps.”*

23. There is a strong controversy as to what documents were sent by the appellant along with the aforesaid admitted communication to the concerned department to show ownership of the appellant. As per the respondent it was a copy of the decree sheet of the Jammu Court along with the partition as done by the Local Commissioner appointed by the Jammu Court. The appellant has strongly refuted the same and states that he had only annexed certain electricity bills and electoral roll documents. However, for the purpose of the present adjudication we may ignore the annexures to the said document as it is not appropriate for this court to go into the said issue while adjudicating upon an application under Order VII Rule 11 CPC.

24. The pleadings of IA No.22835/2012 as reproduced above and the admitted document being letter dated March 01, 2007 sent by the appellant

to the Jammu & Kashmir State Government unequivocally show that there is no denial of the fact that the appellant has been renting out the property in Jammu and has been utilizing the rents thereof for his own exclusive use and to the exclusion of the alleged co-owners. The communication also clearly shows that the appellants refers to the area given on rent as his own property. Even otherwise, if the property was joint, there was no reason to have rented out the property only with the consent of the appellant. It would have needed the consent of all the co-owners of the suit property some of whom are admittedly residing in the said suit property. There is no explanation given by the appellants in their pleadings as to how they have been renting a portion of the property in Jammu to the exclusion of others and as to how they have been referring to the said portion of the property as their own property to the exclusion of other alleged co-owners.

25. In the background of these facts one cannot help but concluding that the contentions of the appellant regarding having no knowledge of the decree passed by the Jammu Court is incorrect and without any merits whatsoever. Based on the pleadings and the admitted document we conclude that appellants had knowledge about the decree of the Jammu Court.

26. The next contention sought to be raised by the appellant regarding the Jammu Court decree is non-compliance of Order 32 Rule 3 CPC. It is submitted that as no guardian was appointed for appellant No.1, who was a minor and a party to the suit the decree is a nullity.

27. Reference may be had to the statutory provisions which read as under:-

“SUIT BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

3. Guardian for the suit to be appointed by Court for minor defendant

(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

3A. Decree against minor not to be set aside unless prejudice has been caused to his interest.-*(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor, but the fact that by reason of such adverse interest of the minor, shall be a ground for setting aside the decree.*

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.”

28. The learned Single Judge has in the impugned order held that the provisions of Order 32 CPC are procedural in view of the provisions of Order 32 Rule 3A CPC. A decree for non compliance of Order 32 would be a nullity only on prejudice being suffered by a minor being shown and not merely by reason of non-compliance of some procedure. The grandfather of the appellant No.1 Late Lt.Col. Dina Nath was a defendant in the suit and did not claim any share in any of the properties. It is the claim of the appellants themselves that Late Lt.Col.Dina Nath was very protective towards the appellant No.1 and had brought him up like his own son. The proceedings were duly conducted under his supervision. Hence, the impugned order holds that no prejudice was caused to appellant No.1.

29. We may first see the judgment of the Full Bench of the Punjab &

Haryana High Court in the case of Amrik Singh & Anr.(supra).The Punjab and Haryana High Court in the said case held as follows:-

“13....The object of Order 32 is to see that no decrees are passed against minors where they are not effectively represented. I have deliberately used the words 'effectively represented' in contradistinction to the 'representation' contemplated by Order 32, Rule 3. If a minor is represented by a guardian ad-litem and the interests of the other major defendants are identical with him and those defendants are effectively prosecuting the litigation it can hardly be said that a minor is not effectively represented. Too much insistence on technical provisions of a procedural law can at times lead to absurd results and cause injustice to parties. It is only where a Court comes to the conclusion that the minor was not effectively represented and thus he was in fact not a party to the proceedings that the result envisaged by the learned Judges would necessarily follow. But where the minor is effectively represented, though technically not in line with the provisions of Order 32, Rule 3, the said result will necessarily not follow.”

30. Similarly, in AIR 1973 Madras 12 (V 60 C 5), Rangammal vs. Minor Appasami and Ors. the Madras High Court held as follows:-

“9.....Ramamsami who had no interest adverse to that of the adopted son represented his son in the further proceedings and he filed an appeal against the preliminary decree on his behalf and as guardian of his son and in the second appeal in the High Court he represented the minor's interest. He put forward the adoption of the minor in the above proceedings and no contention was put forward by him contrary to the minor's interest. In the above circumstances, it cannot be said that any prejudice has been caused to the minor on account of the formal defect in not passing a formal order appointing him as guardian ad litem to the minor.....”

31. The judgment of the Madras High Court as above would be squarely applicable to the facts of this case. The facts of the present case would show that the appellant No.1 was represented by his mother appellant No.2 in the

proceedings. In that eventuality merely because a formal order was not passed appointing the mother as a guardian would not be a ground to set aside the decree passed by the Jammu Court.

32. The judgment of the Supreme Court in the case of Ram Chander (supra) would not be applicable to the facts of the present case. In that case a suit had been filed against one Ram Lal for recovery of money. Ram Lal was a lunatic. An ex-parte decree was passed against him and in execution the house was sold and sale certificate was issued. Formal delivery of possession took place. Admittedly Ram Lal continued to live in the house till he died leaving no heir. Ram Lal being a subject of the Maharaja of Jaipur, on his death the servants of the Maharaja took possession of the house. The son of the person who was successful in the auction filed a suit for possession. The court held that the decree against Ram Lal was a nullity as Order XXXII CPC had not been complied with and no guardian for the lunatic was appointed. The Supreme Court held that in these circumstances the decree has to be treated as without jurisdiction and the sale in execution is also void. The Supreme Court held as follows:-

“(3) It is now a well-settled principle that, if a decree is passed against a minor without appointment of a guardian, the decree is a nullity and is void and not merely voidable. This principle becomes applicable to the case of a lunatic in view of R.15 of O.32 of the Code of Civil Procedure so that the decree obtained against Ram Lal was a decree which has to be treated as without jurisdiction and void. In these circumstances, the sale held in execution of that decree must also be held to be void.”

33. In the above case Ram Lal was not represented at all in the suit. The facts of the present case are quite different from the case of Ram Chander (supra). In the present case the appellant was arrayed as a party through his mother as guardian.

34. Hence, in view of the pleadings of the parties and admitted documents on record the decree of the Jammu Court cannot be set aside as being void as claimed by the appellants.

35. We shall now deal with the challenge made by the appellants to the claim of respondent No.1 of being owner of the property at West End, New Delhi. The only argument pertaining to the property at West End, New Delhi which has fallen to the share of respondent No.1 is that it was part of the joint family property. It is claimed that on the death of the father of the appellant Late Major Puran Chander in the 1965 war, the grand parents had withheld the proceeds of an LIC Policy and had given the proceeds to respondent No.1 for construction of the house/purchase of the property at Delhi. In the application for amendment of the plaint being IA No. 22835/2012 it is urged that the sub-lease of 1970 pertaining to the said property has been suppressed throughout and the same is false and frivolous. The letter said to have been written by Smt.Krishna Thakur, the grandmother who had applied to DDA to transfer the property to respondent No.1 written within six months of the death of her elder son, namely, the father of appellant No. 1 is said to be vitiated by fraud and suspicion inasmuch as on the sudden death of a young son in war, the entire family and locality was in a state of shock and there was no question of the grandmother sending such a letter to DDA. Hence, the contention that the sub-lease is null and void.

36. The allegations of the appellant to claim that the registered sub lease is void, are vague and have no merits. Merely because the grandmother was in a state of shock in 1966 when she wrote the letter to DDA cannot mean that she cannot write to DDA to register the property in the name of respondent No.1. In fact a perusal of letter dated August 31, 1970 written by

DDA accepting the request of Smt.Krishna Thakur to register the plot in the name of respondent No.1 would show that the said letter is in response to letter dated August 14, 1970 of Smt.Krishna Thakur. Hence, the request to transfer the plot has been repeated by Smt.Krishna Thakur in 1970, five years after the death of her son. The conclusion is obvious. The said Smt.Krishna Thakur has repeated her request to DDA to transfer the property in the name of Respondent No.1 and it is not possible to accept the allegations of the appellant. The position regarding the Delhi Property is repeated with consent of all in the proceedings in the Jammu Court. There is no merit in the contentions of the appellant in this regard.

37. We cannot also help noticing that the sub-lease was registered in favour of respondent No.1 for the said property in West End, New Delhi on December 11, 1970 by DDA. Respondent No.1 has been treating the said property as exclusive owner to the complete exclusion of the family members enjoying unhindered possession and accepting rent from the tenants to the exclusion of others. The original owner of the property Smt.Krishna Thakur expired in 1975. Lt.Col.Dina Nath, her husband expired in 1994. Had the transfer of the said West End, New Delhi property been actuated by fraud played upon them by respondent No.1, surely somewhere down the line after lapse of so much time from the death of their elder son who died in 1965, the said two persons would have taken steps to challenge the registration of the sub-lease in favour of respondent No.1. The parents in their life time did not take any such steps. Clearly there are no merits in the contentions of the appellants pertaining to the property at West End, New Delhi. The plaint fails to disclose any cause of action in favour of the appellants regarding the said suit property.

38. We concur with the view of the learned Single Judge. However, we

may like to note that the learned Single Judge has exercised powers under Order VII Rule 11 CPC while rejecting the plaint. The scope of exercise of powers under Order VII Rule 11 CPC is limited by the contours of the provision. While exercising those powers what has to be seen is only the averments in the plaint and the documents filed alongwith the plaint. The defence as taken in the written statement is not to be gone into for the said purpose. To that extent, the judgment of the learned Single Judge may suffer from an infirmity. However, in our view given the nature of pleadings and admitted documents on record and the extensive arguments advanced by the parties on the issues discussed herein, this was a fit case for the Court to exercise powers under Order XII Rule 6 CPC where the Court has powers to suo moto pass a judgment. There is no requirement in Order XII Rule 6 CPC for filing of a formal application. The Court can on its own motion without any application by a party proceed to pass a decree on admissions as stated in Order XII Rule 6 CPC. Order XII Rule 6(i) CPC reads as follows:-

“6. Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.”

In our view based on the pleadings and documents placed on record by the parties there are clear admissions of fact which warrant passing of the order of dismissal of the plaint.

39. We also concur with the view expressed in the impugned order that the appellants by the present suit seek to challenge the fairness of the

distribution of the assets done in 1976 nearly 35 years afterwards. Given the lapse of time the impugned order rightly holds that the status that has prevailed for the last 35 years ought not to be disturbed. We also cannot help noticing that what is being sought by the appellants is the share of Late Major Puran Chander, the appellants being his legal heirs. Appellant No.2 being the widow, suffered from no legal disability but has chosen not to challenge the distribution that has taken place for 35 years. Appellant No.1 became a major in 1984. He has woken up now 27 years later to claim a partition of the properties, claiming ignorance of the registered perpetual sub-lease and the partition decree. The whole exercise appears to be motivated by the fact that the property in Delhi is located in a prime residential area of South Delhi whose value has appreciated hugely in the last decade or so. The present suit is clearly vexatious.

40. The Division Bench of this court in the case reported as 2012 (127) DRJ 70 Aniruddha Dutta & Ors. vs. Bhawani Shanker Basu & Ors. held as follows:-

“28. A Court of record has every inherent power to prevent the abuse of its process and Order 7 Rule 11 of the Code of Civil Procedure is not the complete reservoir of the power of nip a frivolous suit when it is still in the stage of infancy. The inherent powers of a Court of record, and we highlight that Section 151 of the Code of Civil Procedure does not confer, but saves the inherent power of a Court also constitutes the reservoir of the power of a Court of record to throw out vexatious suits.”

41. Similarly the Rajasthan High Court in the case reported as 2008 (1) ILR (Raj) 619 Temple of Thakur Shri Mathuradassji vs. Shri Kanhaiyalal & Ors. in para 16 held as follows:-

“16. ... If the suit is abuse of process of the court and cannot

be dismissed under Order 7 Rule 11 CPC then the court is not helpless and can accordingly invoke the powers under Section 151 CPC and can dismiss the suit under Section 151 CPC. Frivolous litigations are required to be nipped in the bud at the earliest possible stage otherwise no relief to the aggrieved party because of the reason that sole object of the frivolous litigation is to drag adversary in the litigation till it is dismissed consuming several years in trial. If court reaches to the conclusion that suit is frivolous from the totality of the facts brought on record or which have come on record then by not dismissing the suit at earliest, the court virtually declares that a frivolous suit can demand trial of suit and aggrieved party has no remedy against frivolous suit. If there are creases in the law or sometimes is left out or not specifically provided in statute then they are required to be ironed out by the courts by interpreting the law in a manner to advance the cause of justice and no party can be left with no remedy against frivolous suits. At the cost of repetition, it is observed that the continuation of frivolous suit against any person on the ground that it cannot be dismissed since there is no provision under Order 7 Rule 11 CPC is virtually denying an aggrieved party his right to crush the frivolous litigation without suffering the trial of suit.”

42. The present suit is utterly frivolous. The family affairs which have been settled long back in 1970-1976 cannot be permitted to be disturbed on the frivolous and vexatious grounds as sought to be done in the present proceedings. We feel this is a frivolous suit that should be nipped in the bud at this stage. We see no merits in the appeal. The same is dismissed.

43. Keeping in view the fact that appellant No.2 is a war widow, we do not impose any costs.

**JAYANT NATH
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

MAY 19, 2014/n/rb