2023INSC897

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5355 OF 2023

(@ S.L.P.(C) NO. 6793 OF 2023)

VIKRANT KAPILA AND ANOTHER … APPELLANT(S)

VERSUS

PANKAJA PANDA AND OTHERS … RESPONDENT (S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Defendant Nos. 4 and 5 in C.S. (O.S.) No. 701/2021 are the Appellants, and the Civil Appeal is directed against the Judgment and Decree dated 11.10.2022 in RFA (O.S.) No. 15/2022, on the file of the High Court of Delhi.

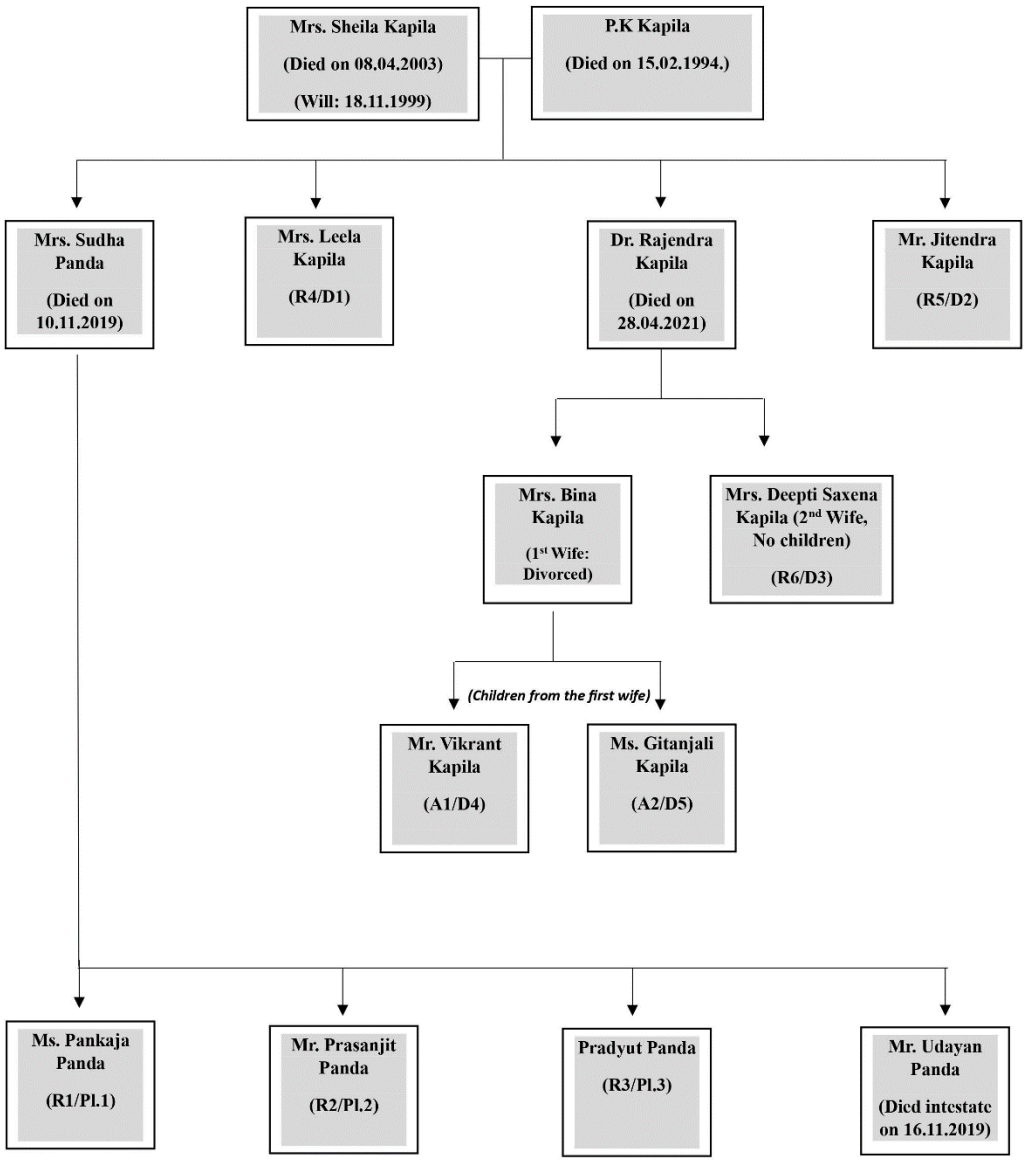
2. Respondent Nos. 1, 2, and 3, in the Appeal, filed the subject suit for partition, separate possession, and permanent injunction, concerning Property admeasuring about 471 square yards, together with the built-up area of a house described as D – 897, New Friends Colony, New Delhi-110025[1].

3. For convenience, the parties are adverted to as arrayed in the Original Suit.

[1] Suit Property.

AVERMENTS IN THE PLAINT

4. It is averred that Sheila Kapila was the sole and absolute owner of the Suit Property. On 08.04.2003, Sheila Kapila died, and her husband, the late Sh. P.K. Kapila pre-deceased her on 15.02.1994. Sheila Kapila was practising the Hindu religion and died intestate. The parties claim to be governed by Hindu Law. To appreciate the *inter se* relationship between the parties and the claims/counterclaims for partition of the Suit Property, the genealogy of the parties is noted hereinunder:



5. Therefore, the succession or inheritance to the Suit Property is governed by the principles of intestate succession applicable to a Hindu woman. Plaintiff Nos. 1 to 3 are the grandchildren of Sheila Kapila through Mrs. Sudha Panda, who is the first daughter of Sheila Kapila. Mrs. Sudha Panda died on 10.11.2019. The Plaintiffs claim one-fourth right in the Suit Property as co-owners and hence, have filed the Suit for partition, separate possession, etc. Defendant Nos. 1 and 2 are the daughter and son of the Late Sheila Kapila, respectively. Defendant Nos. 4 and 5 are the daughters of late Dr. Rajendra Kapila, through his first wife, Mrs. Bina Kapila, and are also the grandchildren of Sheila Kapila. On 21.15.2008, the marriage between Dr. Rajendra Kapila and Mrs. Bina Kapila stood dissolved. On 14.02.2009, the marriage between Dr. Rajendra Kapila and Dr. Deepti Saxena/ Defendant No. 3 was solemnized. On 28.04.2021, Dr. Rajendra Kapila died. Hence, the Plaintiffs in the array of parties included Defendant No. 3 and also Defendant Nos. 4 and 5 as party Defendants to the Suit.

5.1 The Plaintiffs aver that the Suit Property is inherited by the four children of Sheila Kapila and therefore, at the foremost, the Suit Property is partitioned into four equal shares, allotted one such share individually to the Plaintiffs and Defendant Nos. 1 and 2. The share of Dr. Rajendra Kapila is deposited in the Court till a final decision on intestate disputes between Defendant No. 3 on one hand, and Defendant Nos. 4 and 5 on the other hand, are adjudicated by a separate legal proceeding.

5.2 The Plaintiffs claim a share in the Suit Property as co-sharers/joint owners on the principle of devolution. The averments essential for disposing of the Appeal are adverted to. Defendant Nos. 4 and 5, through their mother, Mrs. Bina Kapila, have sent threatening and intimidating communication to Plaintiff No. 1, claiming an undetermined share in the Suit Property through e-mail. Defendant No. 4 alleged that the Late Sheila Kapila left behind a Will providing for succession to the Suit Property. In other words, Defendant Nos. 4 and 5 claim that the Suit Property is divided and enjoyed as per the last Will of Late Sheila Kapila. The Plaintiffs deny the existence of the Will said to have been executed by their grandmother. The Plaintiffs, Defendant Nos. 1, 2, and 3 are together in their pleas on the presence of the Will alleged to have been executed by Sheila Kapila. Therefore, the Plaintiffs, Defendant Nos. 1, 2, and 3, claim intestate succession to the Suit Property.

5.3 The Plaintiffs deny the copy/photograph of the Will of Late Sheila Kapila, communicated by the Advocate of Defendant No. 4. The alleged original Will of Sheila Kapila is not furnished to the Plaintiffs. In this background, while the Plaintiffs deny the existence of the Will, they raise an alternative plea that the purported Will relied upon by Defendant No. 4, even if construed as valid, would provide an absolute legacy in favour of the four children of Late Sheila Kapila. Therefore, the Plaintiffs contend that succession to the Suit Property as governed by a Will, *firstly*, is untenable and illegal, and, *secondly*, the Will confers absolute bequest in favour of her four children. Therefore, Defendant Nos. 4 and 5 did not

succeed to the estate of Late Sheila Kapila. Defendant Nos. 4 and 5, all these years, maintained silence on the existence of the Will including during the lifetime of their father, Dr. Rajendra Kapila. Defendant Nos. 4 and 5 propound the said Will of Late Sheila Kapila, after 18 years of her demise. The Plaintiffs resist the claim of Defendant Nos. 4 and 5 for a share in the Suit Property. Alternatively, it is averred that the Suit Property can be sold, and the sale proceeds be partitioned into four equal shares and are allotted to *(i)* Plaintiffs, *(ii)* Defendant No. 1, and *(iii)* Defendant No. 2 and the fourth share of Dr. Rajendra Kapila is divided among Defendant Nos. 3, 4 and 5 as finally adjudicated by a legal proceeding. The parties agree that the Suit Property cannot be partitioned by metes and bounds and enjoyed as a separate allotted partition.

6. The Plaintiffs, pending Suit filed an I.A. No. 17202/2021 under Order XXXIX, Rules 1 and 2 of Code of Civil Procedure, 1908[2], pray for the following reliefs: -

> "
>
> *(A) Directing sale of the Suit Property, and proceeds thereof being divided in the ratio of 25% each for the Plaintiffs, Defendant No. l and Defendant No.2, and the proceeds qua share of Dr. Rajendra Kapila being deposited before this Hon'ble Court until adjudication thereof; and*
>
> *(B) Restraining the Defendants No. 4 and 5 or their agents, assigns and representatives, from interfering with the peaceful possession of the Suit Property of the Plaintiffs till such time that the Suit Property is sold; and*

[2] CPC.

(C) *Directing the parties to maintain status quo qua title and possession of the Suit Property."*

6.1 The dates of posting of the I.A. and the original Suit are also examined at an appropriate stage of our consideration.

WRITTEN STATEMENT OF DEFENDANT NO. 1

7. Defendant No. 1, as noted in the genealogy, is the daughter of Sheila Kapila and aged 84 years. Defendant No. 1 supports and admits the claim for partition among the children of the Late Sheila Kapila as legal heirs. Defendant No. 1 joins issue with Defendant Nos. 4 and 5 on the existence or genesis of the Will dated 18.11.1999, said to have been executed by Late Sheila Kapila. Defendant No. 1 stated a few circumstances shared by the Late Sheila Kapila with her, on how her children should maintain a good relationship after Late Sheila Kapila's demise and how the Suit Property is inherited and enjoyed by her four children. Defendant No. 1 avers that her mother died intestate. The long gap in surfacing the Will definitely raises suspicion on the existence of the Will. Defendant Nos. 4 and 5 are advancing a claim not put forth or accepted by Dr. Rajendra Kapila. Having seriously objected to the existence of the Will dated 18.11.1999 of Late Sheila Kapila, it is also stated that sufficient circumstances are presented to raise suspicion on the existence of the Will. In a nutshell, it can be narrated that Defendant No.1 in all fours joined issues with Defendant Nos. 4 and 5 on the mode and manner of administration of the Suit Property by the heirs of Late

Sheila Kapila. Defendant No. 1 supports the partition and mode of partition and, hence, prayed for passing a decree in terms of the prayer made in the plaint. We hasten to add that the frame of the Suit is for partition through intestate succession and not by testamentary succession.

WRITTEN STATEMENT OF DEFENDANT NO. 2

8. Defendant No. 2, in all material particulars, supports the case of the Plaintiffs and Defendant No. 1. In other words, Defendant No. 2 is praying for partition of the Suit Property by way of intestate succession and is contesting the existence or otherwise of the Will dated 18.11.1999 of Late Sheila Kapila. Defendant No. 2 prays for passing a decree for a partition of immovable Property in terms of the prayer made in the plaint.

9. We would have referred to the case of Defendant No. 3 at this juncture, but for convenience and the continuity in understanding the real issue in the matter, we would take up the case of Defendant No. 3 after adverting to the case of Defendant Nos. 4 and 5.

WRITTEN STATEMENT OF DEFENDANT NO. 4

10. Defendant No. 4 admits that the Suit Property was owned and held by Sheila Kapila as an absolute owner. Defendant No. 4 categorically raises a plea that Sheila Kapila did not die intestate, but she died leaving behind the Will dated 18.11.1999. Sheila Kapila, the testatrix, in her Will dated 18.11.1999, dealt with the Suit Property. According to Defendant No. 4, a copy of the Will was provided

to Defendant No. 4's father and mother. The original Will was with the testatrix and her first daughter, Mrs. Sudha Panda, who was taking care of the testatrix during the last days of her life. Defendant No. 4 asserts that the Suit Property could be divided in terms of the Will dated 18.11.1999. Defendant No. 4 relies on a few clauses in the Will, which read thus:

> *"i. The house shall belong to all four children with each having a 25% share in the property.*
>
> *ii. The beneficiaries will not have any power to dispose of their share of the property in any manner whatsoever. They Will have the right to enjoy their share of the property but will not have the right to make any will with respect to their share.*
>
> *iii. If any of the four beneficiaries die then his/her share of property shall devolve upon his/her children, who will have the full ownership of the property with the power of disposal. However, if the children of the deceased beneficiary intend to dispose of their share of the property, then they shall first offer it to the other beneficiaries or their children in case they are dead."*

10.1 In terms of the operative clause in the Will dated 18.11.1999, the four children of Sheila Kapila have a beneficial life interest in the Suit Property. The children can enjoy the Suit Property during their lifetime and do not have a right to dispose of any share in it. Similarly, Defendant No. 3 does not have any right in the Suit Property that can support the prayer for partition or claim the share of Dr. Rajendar Kapila. Defendant No. 4 asserts that his father, Dr. Rajendra Kapila, had a life interest, and he could not have executed a will in favour of Defendant No. 3. Defendant No. 4 claims to have acquired the

share under the Will upon the demise of Dr. Rajendra Kapila along with Defendant No. 5. The written statement emphasizes a dispute between Defendant No. 4 and Defendant No. 5 on one hand, and Defendant No. 3 on the other hand. In the said context, it is averred that Dr. Rajendra Kapila's Will dated 22.02.2020, for which a probate is obtained by Defendant No. 3, does not refer to the Suit Property. In terms of testamentary succession dated 18.11.1999 desired by Sheila Kapila, Dr. Rajendra Kapila could not have included the share in the Suit Property in the Will executed by him in favour of Defendant No. 3. According to Defendant No. 4, Sheila Kapila died by leaving behind her last Will dated 18.11.1999. The Plaintiffs have placed a copy of the Will on record and Defendant No. 4 prays for division of the Suit Property in terms of the Will dated 18.11.1999. Defendant No. 4 contests the interpretation placed by the Plaintiffs and Defendant Nos. 1, 2 and 3 on the operative portion of the Will dated 18.11.1999. Defendant No. 4 claims that the right in the Suit Property is opened up with the demise of Dr. Rajendra Kapila/Father on 28.04.2021. It is explicitly averred that the Plaintiffs have placed a part of the correspondence exchanged between the parties and all the e-mails are not placed on record. Defendant No. 4 prays for the division of Suit Property, and the prayer reads thus;

> *"Pass a decree of partition of immovable Property described as 'D-897 New Friends Colony New Delhi' admeasuring about 471 Sq. Yards in terms of the Will dated 18 November 1999 of Late*

Mrs. Sheila Kapila, who was the absolute owner; of the Suit Property at the time of her death."

11. Defendant No. 5, though filed a separate written statement, which is verbatim in line with the narrative of Defendant No. 4. For brevity, we are not adverting to the case of Defendant No. 5.

WRITTEN STATEMENT OF DEFENDANT NO. 3

12. The marriage between Dr. Rajendra Kapila and his second wife, Mrs. Deepti Saxena Kapila (Defendant No. 3), was solemnized on 14.02.2009. On 28.04.2021, Dr. Rajendra Kapila died. Late Dr. Rajendra Kapila upon the demise of Sheila Kapila had become one of the four co-sharers in the Suit Property. Defendant No. 3 states that a copy of the alleged Will was never made available or handed over to Dr. Rajendra Kapila during his lifetime. According to Defendant No. 3, Dr. Rajendra Kapila had no knowledge of any Will of Sheila Kapila. Dr. Rajendra Kapila, being very close with his mother, was never sounded on the execution of a Will by Sheila Kapila in favour of her children and grandchildren. Sheila Kapila always intended that each of her children is entitled to an equal share in the Suit Property. Dr. Rajendra Kapila treated his twenty-five per cent share in the Suit Property as an owner and incorporated it in the terms of his divorce from his first wife, Dr. Bina Kapila. Dr. Bina Kapila and her children, in spite of the knowledge of the mode and manner in which the Suit Property is

to be partitioned, have moved the court with untenable pleas. Defendant No. 3 prays for a decree in terms of the prayer in the plaint.

13. In essence, it is captured that the Plaintiffs and Defendant Nos. 1 to 3 claim intestate succession to the Suit Property, and Defendant Nos. 4 and 5 press on the existence of the Will dated 18.11.1999, and hence, claim testamentary succession to the Suit Property. The parties, through an independent application, moved for admission/ denial of documents on which the respective pleas are relied. We will excerpt these exchanges between the parties at the appropriate stage of our consideration.

14. The following Orders of the Learned Single Judge of the High Court of Delhi are referred to as a background to appreciate arguments on Impugned Judgment advanced by the Counsel appearing for the parties:

"ORDER DATED 22ND MARCH, 2022

C.S. (O.S.) NO. 701/2021 AND I.A. NO. 17202/2021 [U/O-XXXIX, RULES 1 AND 2 OF THE CODE OF CIVIL PROCEDURE, 1908 (CPC)]:

"Pursuant to the order passed by this Court on 14th March, 2022, the counsel for the defendants No. 4 and 5 has taken instructions from his clients and submits that the defendants No. 4 and 5 are not inclined to purchase the respective shares of the remaining parties in the Suit Property at the circle rate.

The written statements filed on behalf of the defendants No. 2, 4 and 5 are lying under objections.

The counsels to take steps to remove the objections and have the same placed on record within two weeks from today.

In their reply to I.A. 17202/2021, the defendants No. 4 and 5 have taken objection to the sale of the Suit Property being ordered under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (Code of Civil Procedure, 1908 (CPC).

In response, the counsel for the plaintiffs submits that the dehors the aforesaid application, the plaintiffs are invoking powers of the Court under Section 2 of the Partition Act, 1893 to direct sale of the Suit Property. She states that under Section 2 of the Partition Act, sale can be directed suo moto by the Court.

The parties shall address submissions on this aspect on the next day of hearing.

List on 11th April, 2022.

The parties may file short written submissions, not exceeding three pages, in support of their submissions within two weeks from today, along with the judgments sought to be relied upon.

Interim orders to continue."

ORDER DATED 11TH APRIL, 2022

C.S. (O.S.) NO. 701 OF 2021 AND I.A. NO. 17202/2021 [U/O-XXXIX RULES 1 AND 2 of CODE OF CIVIL PROCEDURE, 1908 (CPC)] :

"For the reasons stated in the application, the same is allowed.

The written statements are stated to have been filed on behalf of the defendants No. 4, 5 and the defendant no. 2, but are still not on record.

The counsels to take steps to have the written statements placed on record.

The written submissions have been filed on behalf of the plaintiffs and the defendants no. 4 and 5.

The counsel for the defendants No. 1 and 2 states that written submission have also been filed on behalf of the defendants no. 1 and 2, however, the same are not to record.

It is made clear that the matter Will be heard on the next date of hearing even if the written statements/submissions of the parties are not on record.

List on 10th May, 2022.

Interim orders to continue."

15. On 10.05.2022, a preliminary decree in O.S. No. 701 of 2021 was passed and I.A. No. 17202/2021 was allowed. The preliminary decree declared the shares of the parties. The operative portion of the composite decree is excerpted hereunder:

"*Accordingly, the plaintiffs no. 1, 2 and 3 together, defendant no. 1, defendant no. 2, and the legal heirs of late Dr. Rajendra Kapila, would be entitled to 25% undivided share each in the suit Property.*

In view of the above, a preliminary decree is passed in the above terms, declaring that the parties shall each have undivided shares in the suit Property in the manner indicated below:

S. No.	**Particulars of the Suit Property**	**Share of Plaintiff Nos. 1 to 3**	**Share of Defendant Nos. 1**	**Share of Defendant No. 2**	**Share of the legal heirs of late Dr. Rajendra Kapila**
i.	D-897 New Friends Colony New Delhi	25%	25%	25%	25%

Counsels for the parties agree that the suit Property cannot be divided by metes and bounds. In fact, in paragraph 14 of the plaint,

the plaintiffs have specifically averred that it is not possible to divide the suit Property by metes and bounds. There has been no denial by the defendants no.4 and 5 of the aforesaid averments in their written statements. Further, in reply to I.A. No.17202/2021, it has been stated by the defendants no.4 and 5 that they have only visited the suit Property from time to time but have never lived there. They are permanent residents of the United States of America. 41.

In view of the above and in terms of Section 2 of the Partition Act, the only option available would be to sell the Property as a whole and divide the proceeds between the parties thereto.

In light of the above, I am of the view that the aforesaid Property should be put to sale and the proceeds thereof be distributed equally amongst the parties in terms of their shares as determined above.

Since there is a dispute in respect of the 25% share of the legal heirs of late Dr. Rajendra Kapila, it is directed that the proceeds of sale received in respect of his share be deposited in the Court and the same shall be subject to the outcome of any legal proceedings between the defendant no.3 and the defendants no. 4 and 5."

16. The Learned Single Judge in terms of discretionary Jurisdiction under Order XII, Rule 6, read with Order XV, Rule 1 of the CPC, passed a decree without conducting a trial. While passing the decree on the alleged admission, it cannot be said that the objection of Defendant Nos. 4 and 5 was ignored. In the Judgment dated 10.05.2022, it is recorded that Defendant Nos. 4 and 5 through e-mail, conveyed to the Plaintiffs that the original Will of Sheila Kapila is with the mother of Defendant Nos. 4 and 5. However, Mrs. Bina Kapila filed an affidavit and vocally suggested that the original Will might, therefore, have been

handed over by Sheila Kapila to her first daughter, Mrs. Sudha Panda. Without opportunity or trial of the issues, findings on the very existence of the Will are recorded by the Single Judge and read thus;

> *"The reference to the alleged Will of late Mrs. Sheila Kapila was made by the mother of the defendants no.4 and 5 for the first time in her email dated 29th July, 2021 written to the plaintiffs, wherein she had claimed that "she has a valid Will duly signed by late Mrs. Sheila Kapila". The subsequent e-mail dated 2 nd November 2021 sent by the defendants no.4 and 257 5 along with their mother to the plaintiffs also suggests that the original Will of late Mrs. Sheila Kapila is with the mother of the defendants no.4 and 5. 12. However, in the affidavit of Mrs. Bina Kapila, placed on record by the defendants, it has been vaguely stated that "the original will may therefore have been handed over by Mrs. Sheila Kapila to Mrs. Sudha Panda." 13. The contradictory stance taken by the defendants no.4 and 5 in respect of the possession of the Will, as noted above, creates a serious doubt regard to the existence of the alleged Will. The fact of the matter is that the original Will has not been produced before the Court. The plaintiffs and the defendants no.1 and 2 completely deny the knowledge or existence of the aforesaid Will. 14. Even though I have expressed my reservations with regard to the existence of the Will, I have proceeded to consider the alleged Will".*

17. We do not approve of the conclusion of the Learned Single Judge, to the effect that the above stated contradictory statements of Defendant Nos. 4 and 5 on the possession of the Will create a doubt on the existence of the alleged Will. It is further noted that the original Will has not been produced before the Court. It is also noted that the Plaintiffs, and Defendant Nos. 1 and 2 deny the knowledge or existence of the said Will. Notwithstanding the above, *viz.* that there is an issue for consideration in the trial, the Judgment proceeds to consider the testamentary succession contained in the Will dated 18.11.1999, and a Judgment on admission

is delivered. The Judgment refers to the paragraphs already excerpted and interpreted the clauses in the Will allowing to the children of Sheila Kapila, an absolute right. The Single Judgment placed reliance on the e-mail dated 29.07.2021 exchanged between the parties. A categorical finding in paragraph 29 of the Judgment is recorded which reads thus:

> *"In view of the aforesaid discussion, there is no doubt in my mind, whether on the principles of intestate succession or in terms of the Will dated 18th November, 1999 propounded by the defendants no.4 and 5 that the plaintiffs no.1 to 3 together, defendant no.1, defendant no.2, and the legal heirs of late Dr. Rajendra Kapila, have an absolute 25% undivided share each in the Suit Property."*

17.1 The objection to taking issues to trial has been brushed aside in Paragraphs 30 and 31 of the Judgment, by holding that the examination is confined to the interpretation of the clauses in the Will propounded by Defendant Nos. 4 and 5, where evidence is not required. Without further deliberation, we record that a decree has been passed, and it does not appear merely as a preliminary decree, but rather appears to be both, i.e., preliminary and final in more than one sense. We notice that the inference drawn by the Single Judge where a case for a Judgment and Decree on admission is made out, suffers from serious legal flaws. The very basis for the Judgment and Decree is that Defendant Nos. 4 and 5 failed to produce the original copy of the Will dated 18.11.1999. An adverse inference on non-production can be drawn even if the matter has been posted, issues have been framed, and the Suit has been posted for evidence of the parties. Even at the

stage of admission and denial, the parties, namely the Plaintiffs, Defendant Nos. 1 to 3 on one side, and Defendant Nos. 4 and 5 on the other side, are not admitting the very existence of the Will dated 18.11.1999 and are not on the same page. In our further consideration of the existence of admission, whether conditional or categorical, we will refer to the relevant record of the Trial Court. The inference drawn by the Learned Trial Judge is completely flawed.

18. Defendant Nos. 3 and 5 filed RFA O.S. No. 15/2022 through Impugned Judgment dated 11.10.2022, Division Bench of High Court of Delhi confirmed the Judgment dated 10.05.2022. A close look at the Impugned Judgment discloses that the Division Bench proceeded on the premise that the Will dated 18.11.1999 is not disputed, and an interpretation of clauses in the Will dated 18.11.1999 arises for consideration. The operative portion of the Judgment reads thus:

> *"The sole issue for consideration before us hinges upon the interpretation of one sanguine document – Will dated 18.11.1999, which, being admitted by all parties, is not under challenge. Relevant clauses for purposes of adjudication of disputes inter-se parties, being clauses (i), (ii) and (iii) of the said Will."*

Hence, the Civil Appeal.

19. We have heard Learned Senior Counsel Mr. Dhruv Mehta, Mr. Shyam Divan and Mr. Ritin Rai for Defendant Nos. 1, 4 and 5 and the Plaintiffs, respectively and Ms. Manisha Sharma for Defendant No. 3.

19.1 Mr. Dhruv Mehta contends that the Courts below committed serious illegality by pronouncing a judgment and passing a decree under Order XII, Rule

6, read with Order XV of the CPC; the main issue for consideration is whether the Suit for partition of the Suit Property belonging to Late Sheila Kapila is by devolution or through testamentary succession. There is no admission on this crucial aspect in a suit for partition and further, when the suit is initiated by one of the co-sharers, the Judgment is rendered on the ground that the children of Late Sheila Kapila are entitled to one-fourth share each. The basis of this partition is the core issue. By inviting our attention to the pleadings of the parties, he argued that the admission through e-mail by Defendant Nos. 4 and 5 is not an admission or unequivocal admission because the existence of the Will is seriously contested by the Plaintiffs, Defendant Nos. 1, 2 and 3. Therefore, unless and until there is a clear admission on the existence of the Will, which is proved by interpreting clauses in the Will, a Judgment on admission is impermissible. There is no categorical admission by the contesting parties on the existence of the Will. The assumption on the existence of the Will by the Impugned Judgments is illegal and to that extent, the findings are unsustainable and have been rendered contrary to the judicial discretion available under Rule 6 of Order XII and Rule 2 of Order XV. It is contended that there are serious and triable issues in the Suit for partition. Learned Single Judge committed illegality by disposing of the Suit while considering the application filed for selling and disposing of the Suit Property. Subject to the outcome of the above arguments, he further argued on the interpretation of the Will under Section 83, Indian Succession Act, 1925. A

few precedents are also relied on, mainly touching upon the construction of a Will under Sections 87 and 88 of the Indian Succession Act, 1925.

20. Learned Senior Counsel appearing for the Plaintiffs and Defendant Nos. 1 and 3 argued that the parties in the Suit for partition are fairly aged and that the Judgment on admission by the Learned Single Judge cannot be faulted with on any ground. It is argued that the Learned Single Judge, to appreciate the admission in the pleading, relied on the pre-litigation correspondence between the parties, read with the pleading by admission. In the circumstances set out by the parties, there is no dispute on the entitlement of the Plaintiffs and Defendant Nos. 1 and 2. The entitlement to the share of Dr. Rajendra Kapila is an *inter se* dispute between Defendant No. 3 on one hand and Defendant Nos. 4 and 5 on the other hand. Therefore, irrespective of admission or no admission on the existence of the Will, the Decree dated 10.05.2022 is legal and valid. Inviting our attention to the pleadings, it is argued that the differentiation between the admitted case and the disputed case comes within the scope of Order XV, Rule 2 of the CPC, and a decree to the extent where it is governed by admission has been made and the dispute is relegated to independent proceedings. Therefore, no exception could be taken to the Impugned Judgment. On the alternative argument of Defendant Nos. 4 and 5, *viz.*, interpretation of clauses in the Will, a few judgments are relied on to commend that correct and available interpretation of the disputed clauses has been legally and validly carried out.

21. We are, in the Civil Appeal, examining the correctness of the Judgment and Decree made on admission and confirmed by the intra Court Appeal.

22. The examination of merits can be compartmentalized as to whether the pronouncement of judgment on alleged admission is legal and if so, whether the interpretation of clauses is held valid and confirms the precedents on this point. From the above preface, it is appreciated that the second part of the examination arises subject to a view or conclusion on the first part of our examination.

22.1 The judicial discretion conferred on the Court is structured on the definition of admission under Section 17 of the Evidence Act, 1872 and Rule 5 of Order VIII, Rule 6 of Order XII and Rules 1 & 2 of Order XV of the CPC.

22.2 An "admission" means, '*a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned'*.[3]

22.3 Admission in pleadings means a statement made by a party to the legal proceedings, whether oral, documentary, or contained in an electronic form, and the said statement suggests an inference with respect to a fact in issue between the parties or a relevant fact. It is axiomatic that to constitute an admission, the said statement must be clear, unequivocal and ought not to entertain a different view. Coming to admission in pleadings, these are averments made by a party in the pleading, *viz*., plaint, written statement, etc., in a pending proceeding of

[3] P Ramanatha Aiyar's Advanced Law Lexicon, 5th Edition, Volume 1 (A-C), p. 140.

admitting the factual matrix presented by the other side. To constitute a valid admission in pleading, the said admission should be unequivocal, unconditional, and unambiguous, and the admission must be made with an intention to be bound by it. Admission must be valid without being proved by adducing evidence and enabling the opposite party to succeed without trial. A court, while pronouncing a judgment on admission, keeps in its perspective the requirements in Order VIII Rule 5, Order XII Rule 6 and Order XV Rules 1 & 2, CPC read with Sections 17, 58 and 68 of the Indian Evidence Act.

22.4 The logic behind such jurisprudential examination of an admission is that a judgment pronounced on admission, not only denies the right of trial on an issue but denies the remedy of appeal. Hence, discretion has to be exercised judiciously and objectively while making a judgment on admission in a pleading. The existence of the power to pronounce a judgment on admission under Rule 6 of Order XII[4] and Rules 1 and 2 of Order XV,[5] is not an issue in the appeal but

[4] **Order XII Rule 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. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

[5] **Order XV**
Rule 1. Parties not at issue.—(1) Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.
Rule 2. One of several defendants not at issue.—2 [(1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.] 3 [(2) Whenever a judgment is pronounced under this rule, decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.

rather the issue is whether pronouncing judgment on alleged admission is valid and legal.

23. When the admissions are categorical and unequivocal, the remedies available against such a decree are limited. In a given case, as in the present appeal, if there is an argument on whether there is an admission of a fact or a document, before examining the merits of the matter, this Court ought to verify whether admission exists or not and also whether the circumstances relied upon by the Learned Single Judge can be constituted as admission for rendering a Judgment. At this juncture, we would like to place on record the answer of the Learned Counsel appearing for the Plaintiffs and Defendant Nos. 1 and 3, to our query, whether their clients are admitting the existence of the Will dated 18.11.1999 or the Will is contested. We notice that the Learned Counsel, going by the pleadings, reply that their clients do not admit the existence and the execution of the Will dated 18.11.1999, which is said to have been executed by Sheila Kapila.

24. In ***Uttam Singh Dugal v. United Bank of India***[6], reiterating the objects and reasons set out while amending Rule 6 of Order XII, CPC, it was stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least

[6] (2000) 7 SCC 120.

to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled".

24.1 Further, the Trial Court can refuse to pass a decree "when a statement is made to a party and such statement is brought before the court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court."

24.2 In the same judgment, the scope and effect of "admissions" was examined and it was held that "admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872".

24.3 Further, this Court in ***Uttam Singh Duggal*** *(supra)*, while adverting to Section 17, Indian Evidence Act, 1872, which provides for admissions through statements in oral, documentary and in electronic form, expanded the scope of admissions and recognised that "admissions are of many kinds: they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice". The case on hand considers an alleged admission in the pleading including the reply given on admission and denial of documents. The provisions under Rule 5 of Order VIII, Rule 6 of Order XII, and Rules 1 and 2 of Order XV of the CPC, enable a court to pronounce a judgment on admission. The court is called upon to exercise judicial discretion

conferred on it by the CPC and the Indian Evidence Act, 1872. The judicial discretion shall always be in addition to the provisions covering the judgment on admission and guided by the best of wit and wisdom of the Court in pronouncing a judgment on admission. The bottom line is that while ensuring judicial discretion, the court does not avoid a trial on an issue where a trial is needed, and findings recorded; alternatively, the court does not try an issue in which there is no contest between the parties. The weighing of options or judicial discretion is dependent on the peculiar circumstances of the case or the nature of the controversy that the court is considering.

25. In ***Himani Alloys Ltd. v. Tata Steel Ltd***[7] it is held that 'Admissions' should be categorical and intentional, as Order XII, Rule 6, CPC allows discretion rather than obligation. Admissions result in judgments without trial which permanently deny any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous, and unconditional, the discretion of the Court is not exercised to deny the valuable right of a defendant to contest the claim. Hence, discretion should be used only where there is a clear and unequivocal admission. The relevant paragraphs read thus:

> *"11. It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the*

[7] (2011) 15 SCC 273.

> *facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear "admission" which can be acted upon. There is no such admission in this case."* (Emphasis Added)

26. The controversy is on the applicable legal principle to the dispute of partition between the parties. The crux of consideration narrows down to the existence, execution and validity of the alleged Will dated 18.11.1999. A will in legal parlance is a testament of a testator/testatrix and is a posthumous disposition of the estate of the testator, directing the distribution of his/her estate upon his/her death. The Indian Succession Act, 1925 provides for legal requisites of a will, and proof of the execution is a *sine quo non* for giving effect to a will. The reasoning of limited assumption of the Will dated 18.11.1999 for interpretative purposes of the operative portion of clauses ignores the method and manner of establishing a will as governing the estate of the testator/testatrix. It is useful to refer to ***Gopal Swaroop v. Krishna Murari Mangal and others***[8], wherein this Court held that as per the provisions of Section 63 of the Indian Succession Act, 1925, the due execution of the Will consists of the following:

i. The testator should sign or affix his mark to the Will;

[8] (2010) 14 SCC 266.

ii. The testator's signature or the mark of the testator should be so placed that it should appear that it was intended to give effect to the writing as a Will;

iii. Two or more witnesses should attest the Will;

iv. Each of the said witnesses must have seen the testator signing or affixing his mark to the Will, and each of them should sign the Will in the presence of the testator.

26.1 Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, stipulate the proof required of a Will. The proof of execution and attestation of a Will are strictly by the scheme of the Indian Evidence Act, and the Indian Succession Act. A Will by the execution is an instrument and becomes an enforceable legal document by proof in accordance with law. A court treats a Will as a legally enforceable document only upon proof in accordance with law. This Court in ***Ramesh Verma (D) Through Lrs. v. Lajesh Saxena (D) By Lrs. and another***[9] referred to ***Savithri and others* v. *Karthyayani Amma and other***[10], and held as follows:

> *"14. In Savithri v. Karthyayani Amma [Savithri v. Karthyayani Amma, (2007) 11 SCC 621] this Court has held as under : (SCC p. 629, para 17)*
>
> > *"17. ... A will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the*

[9] (2017) 1 SCC 257.
[10] (2007) 11 SCC 621.

> *testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine."*
>
> *15. It is not necessary for us to delve at length to the facts of the matter as also the evidence adduced by the parties before the High Court. Suffice it to note that the execution of the wills has to be proved in accordance with Section 68 of the Evidence Act."*

26.2 Upon complying with the requirements of Section 63 of the Indian Succession Act and proof in terms of Section 68 of the Indian Evidence Act, a Will is said to be in existence. The effect of proof of execution of the Will, the ordinary/customary rights of other legal heirs, who would acquire it on the death of the testatrix, will end. The difference between intestate succession and testamentary succession can thus, be appreciated from the above reasoning.

27. We have referred to, in sufficient detail, the pleadings of the parties, both supporting and contesting the Will dated 18.11.1994. The narrative between the parties centers around a few circumstances. At the foremost, from the perspective of the Plaintiffs and Defendant Nos. 1 to 3, the original and absolute owner of the Suit Property, Sheila Kapila, died on 08.04.2003, leaving behind her four children as successors-in-interest to the Suit Property. The Plaintiffs in the Plaint, in

unequivocal terms, deny and dispute the Will dated 18.11.1999, and contest the inheritance through testamentary succession. A careful reading of the plaint and the written statement of Defendant Nos. 1 and 2 makes the position clear.

27.1 On the contrary, Defendant Nos. 4 and 5 propound the Will dated 18.11.1999 as the last testament of Sheila Kapila and set up two legal issues on the claim for partition, i.e., *firstly*, the children of Late Sheila Kapila have life interest, and *secondly*, the grandchildren of Late Sheila Kapila have inherited absolute rights under the alleged Will dated 18.11.1999. The extended contention of the above plea is that Dr. Rajendra Kapila, father of Defendant Nos. 4 and 5, could not have bequeathed the interest in the Suit Property in favour of Defendant No. 3. The extended limb of the objection, no doubt, is left open for consideration in separate legal proceedings. The dispute *inter se* Defendant No. 3 and Defendant Nos. 4 and 5 is left open for decision in a separate proceeding and according to Mr. Mehta, such course is impermissible in a suit for partition, and this argument would be considered on its turn.

27.2 The foundation of the claim in the opposing parties can be summarised as intestate succession on one side and testamentary succession on the other. The plaint averments principally proceed for partition of Suit Property as co-sharers, but the Judgments impugned have laid emphasis on the interpretation of the Will, holding that the children of Late Sheila Kapila are entitled to the Suit Property as absolute owners and a decree for partition in four equal shares could be made.

28. The above discussion takes us to the Impugned Judgments pronounced under Order XII, Rule 6 read with Order XV, Rules 1 and 2 of the CPC.

29. Mr. Dhruv Mehta contends that the Learned Trial Judge pronounced a judgment on admission by assuming that Defendant Nos. 4 and 5 admitted the Will and interpretation of Clauses in the Will dated 18.11.1999, which alone constitutes an issue for decision. He points out a fundamental error that Defendant Nos. 4 and 5 are the propounders of the Will and the existence or execution of the Will dated 18.11.1999 is not admitted by the Plaintiffs and Defendant Nos. 1 to 3. The claim for partition is based as co-sharers and not as legatees under a Will; the Impugned Judgments on admission are based on the case pleaded by Defendant Nos. 4 and 5. There is no consensus or admission on the principle; the Suit Property is divided among the eligible heirs of Sheila Kapila. Reading the pleadings in entirety, it is argued that the admission relied on for partition is illegal and erroneous. The contesting parties are not admitting the existence, leave alone the execution of the Will dated 18.11.1999. The answers to admission and denial of documents are improperly and erroneously appreciated by the courts below. The Judgment on admission, therefore, is completely illegal as it denies the right to trial and adjudication of an issue by the court. Therefore, he prays for setting aside the Impugned Judgment and remitting the matter to the Trial Court for entering on issues, allowing the parties to join the trial and deciding the mode and manner of succession to the Suit Property among the contesting parties.

30. *Per contra*, Learned Senior Counsel, Mr. Shyam Divan and Mr. Ritin Rai, appearing for the Plaintiffs and Defendants Nos. 1, 2 and 3, argue that the Judgment on admission is available from the bare perusal of the reply of Defendant Nos. 4 and 5 in the Written Statement. It has to be read in the light of the reply given by Defendant Nos. 4 and 5 to the application filed on admission and denial of documents. It can be noted that there is no dispute in the relationship between the parties. There is no dispute on the ownership of Sheila Kapila either in the presence or in the absence of the Will. The admitted case at best, refines to the entitlement of each one of the children to a twenty-five percent in the Suit Property but not on the principle of partition. Therefore, according to them, there is no dispute on the seventy-five percent of the claim in the Suit Property, and the twenty-five percent remainder representing Dr. Rajendra Kapila's share is allowed to be independently worked out. It is alternatively argued that a decree passed in favour of the Plaintiffs, Defendant Nos. 1 and 2 is passed and the contested portion is relegated to the Trial Court. In other words, the share of Dr. Rajendra Kapila in the said Suit Property is remitted to the Learned Single Judge for trial and adjudication. In summary, it is contended that a partial/preliminary or final Decree is pronounced insofar as seventy-five percent is concerned and twenty-five percent is remitted to the Court below for adjudication.

31. One of the arguments against the Impugned Judgments is whether admissions in law are available or admissions have been assumed. We need to state in detail the very pleadings considered by the parties. The arguments on both

sides compel us to take into consideration what exactly is admitted by the parties. The Plaintiffs in Plaint Paragraph Nos. 11 to 14 advert to and state the Plaintiffs' case on the existence of the Will. Defendant No. 4, in Paragraphs Nos. 24 to 27, has replied to the case of the Plaintiff. The respective averments are reproduced in the following tabular form:

Plaint	**Written Statement**
Paragraph 11: Defendant No.4 in his communications has alleged that late. Mrs. Sheila Kapila left behind a purported Will which allegedly gives rights to Defendant Nos. 4 and 5 in the Suit Property in respect of their father's share. The Plaintiffs are not aware of any such Will. The Defendant No. l and Defendant No.2 also informed the Plaintiffs that too are not aware of any Will of their late mother Mrs. Sheila Kapila and confirmed that she died intestate. All the family members have always believed that upon the demise of Mrs. Sheila Kapila, the Suit Property devolved upon Mrs. Sudha Panda, Mrs. Leela Kapila, Mr. Jitendra Kapila, and Dr. Rajendra Kapila in equal (25%) undivided share each.	Paragraph 24: The contents of paragraph 11 of the Plaint are incorrect and denied to the extent that the Plaintiffs, Defendant No. 1 and 2 are not aware of the Will. The Plaintiffs, Defendant No. 1 and Defendant No. 2 were always aware of the Will and the present suit is only an attempt to usurp the share of Defendant No. 4 and 5 in the Suit Property.

Paragraph 12: In another communication from Advocate on behalf of Defendant No.4, reliance has been placed on photographs of a document which is purportedly the Will of Late Mrs. Sheila Kapila. The original document has not been furnished to the Plaintiffs. Without prejudice, even assuming without conceding that the purported Will relied upon by Defendant No.4 was a valid document (though it is not), the said purported Will contains an absolute bequest in favour of the four children i.e. Mrs. Sudha Panda, Mrs. Leela Kapila, Dr. Rajendra Kapila and Mr. Jitendra Kapila granting them 25% share each in the Suit Property. As such, Defendant Nos.4 and 5 do not stand to gain any share in the Suit Property after the demise of their father, late Dr. Rajendra Kapila.	Paragraph 25: With respect to the contents of paragraph 12 of the Plaint, It is denied that the Will contains an absolute bequest in favour of the four children i.e. Mrs. Sudha Panda, Mrs. Leela Kapila, Dr. Rajendra Kapila and Mr. Jitendra Kapila granting them 25% share each in the Suit Property. It is reiterated that the Will clearly grants only beneficial life interest to the aforesaid persons as it clearly states that the aforesaid persons cannot dispose of or will the Suit Property. It is only the grandchildren of Mrs. Sheila Kapila who have absolute rights on the Suit Property, including the right to dispose of the same.
Paragraph 13: It is also not out of place to mention that prior to the demise of Dr. Rajendra Kapila, in April 2021, neither the Defendants No.4 or 5 asserted any rights in respect of the Suit Property. It is only after the unfortunate demise of their father that Defe11dants No.4 and 5 have propounded the purported Will of Mrs. Sheila Kapila, after more than 18 years of her demise. Thus, any claim of Defendants No.4 and 5 is not only belated but also barred by delay and laches.	Paragraph 26: The contents of paragraph 13 of the Plaint are incorrect and therefore denied. It is denied that the claim of Defendant No. 4 and 5 is barred by delay and laches. It is clear from the Will that the Defendant No. 4 and 5 had no right in the Suit Property till the time Late Dr. Rajendra Kapila was alive. Defendant No. 4 and 5 became entitled to 25% share in the Suit Property only upon the demise of Late Dr. Rajendra Kapila.

Thus, there is no dispute that the Suit Property is to devolve upon the four children of Mrs. Sheila Kapila, in equal share.	
Paragraph 14: Since a dispute has been created by Defendant No.4 limited to the share of late Dr. Rajendra Kapila in the Suit Property, the Plaintiffs are constrained to institute the present Suit for Partition, by Sale of the Suit Property and division of the Sale Proceeds thereof among the Plaintiffs. Defendant No. I, Defendant No.2 and Defendant No.3 in the ratio of 25% each. As evident from the aforesaid, to the extent of share of the Plaintiffs, Defendant No.1 and Defendant No.2 there can be no dispute. The Suit Property is not capable of division by metes and bounds. As per the Plaintiffs, the following persons are entitled to a share in the Suit Property: - Plaintiffs No. I to 3: 25 % share (i.e., 8.33% share each) Defendant No. l: 25% Defendant No.2: 25% Defendant No.3: 25%	Paragraph 27: The contents of paragraph 14 of the Plaint are incorrect and denied. It is denied that there is no dispute to the extent of share of Defendant Nos. 1 and 2 in the Suit Property. Defendant Nos. 1 and 2 are only entitled to a beneficial interest in the Suit Property in their lifetime and are not entitled to sell or will their share in the Suit Property. It is therefore denied that the dispute in the present proceedings is limited to the share of the late Dr. Rajendra Kapila only. It is further denied that Defendant No.3 has any share in the Suit Property whatsoever.

32. We have excerpted the pleadings from the plaint and the written statement to explain that the selective consideration of pleadings or reading the pleadings out of context, resulted in assuming that the Suit could be decided on admission

and a judgment be pronounced. From a careful reading of the pleadings presented by the parties, there exists a triable issue.

33. The above narrative takes us to the next argument of the Learned Senior Counsel appearing for the Plaintiffs and Defendant Nos. 1 and 2 *viz* that Defendant Nos. 4 and 5 admitted the Will. The argument no doubt is persuasive but on a closer reading of the circumstances prevailing in the case, it emerges that Defendant Nos. 4 and 5 are propounding the existence of the Will. The party at issue admits the existence of the Will dated 18.11.1999, then in a suit for partition, the difference in standing of parties whether plaintiffs/defendant is not of much significance, a decree on admitted case is pronounced. In support of their argument, our attention is also invited to the admission and denial exchanged between the parties. Plaintiffs, by their Affidavit dated 09.03.2022, responded to the admission/denial of documents filed by Defendant No. 4 stating thus:

S. No.	**Particulars**	**Page Numbers**	**Admitted/ Denied**
1.	Photocopy of Will of Mrs. Sheila	1-4	Denied
2.	Affidavit of Mrs. Bina Kapila	4-6	Denied
3.	Emails dated 2 October 2021 from Madhu Sehgal to Plaintiff No.1 and from Defendant No.4 to Plaintiff No.1	7	Receipt admitted <u>contents denied</u>

4.	Email exchanged between Mrs. Bina Kapila and Plaintiff No.1 between 29 July 2021 to 10 August 2021	8	Receipt admitted contents denied
5.	Email exchanged between Defendant No.4 to Plaintiff No.1 between 22 July 2021	9-11	Receipt admitted contents denied
6.	Email exchanged between 20 May 2021 from Defendant No.4 to Plaintiff No.1	12	Receipt admitted contents denied
7.	Email dated 4 May 2021 from Defendant No.4 to Plaintiff No.1	13	Receipt admitted contents denied
8.	Affidavit to compliance of Section 65B of Evidence Act, 1872	14-16	Denied

34. The reply of Defendant Nos. 1 and 2 is also to the same effect.

35. *Per contra*, Defendant No. 4, responding to the admission/denial of documents filed by Plaintiff, replied as follows:

S.No.	Particulars	Admitted/ Denied
1.	XXX	XXX
2.	XXX	XXX
3.	XXX	XXX
4.	XXX	XXX

5.	DOCUMENT NO. 5 Email dated 22.07.2021 from Vikrant Kapila to Pankaja Panda	Admitted
6.	DOCUMENT NO. 6 Email dated 29.07.2021 from Bina Kapila to Pankaja Panda along with attachment	Admitted
7.	DOCUMENT NO. 7 Email dated 2.10.2021 from Madhu Sehgal to Pankaja Panda	Admitted

36. The above analysis would clearly show that there is no exhibit marked with or without objection, much less a categorical admission. It is unequivocally clear to us that the Plaintiffs, Defendant No.1 and Defendant No.3, in no uncertain terms, state their views on the Will. What is admitted by Defendant No. 4 is not an admission of the case of the Plaintiffs. It is at best, a statement in continuation of what has been pleaded in Paragraphs Nos. 24 to 27 of the Written Statement. Appreciation and acceptance of the above pleading/response to the admission/denial as warranting a judgment on admission is patently erroneous. We have in the preceding paragraph noted that the Learned Single Judge, after taking note of the objection to the pronouncement of Judgment on admission, and after doubting the existence of the Will dated 18.11.1999, still proceeded to decide the rights or succession of the parties to the Suit Property.

37. The kernel of the matter is what Sheila Kapila left behind after her demise; (a) the suit property, (b) children and grandchildren (Plaintiffs and Defendants). The succession to the Suit Property, whether intestate or testamentary would be the principal issue for adjudication. We record that the Impugned Judgment interpreted the clauses in the Will dated 18.11.1999 without the Will being brought on record. Secondly, the propounder has not proved the Will in the manner known to law, therefore, the Judgment on admission is an illegal exercise of discretionary jurisdiction under Order XII Rule 6 read with Order XV Rule 2 of the CPC. The case on hand, in our considered view, presents both triable issues in facts and law. For arriving at such a view, we also take note of the categorical reiteration of the Learned Senior Counsel appearing for the Plaintiffs and Defendant Nos. 1 and 2, from the pleadings, their clients are not accepting the existence of the Will dated 18.11.1999. Therefore, pronouncing a view on the operating clauses of document yet to satisfy the requirements of Section 63 of the Indian Succession Act read with Sections 58 and 68 of the Indian Evidence Act, is an illegal exercise of discretion. In our considered view in the case on hand, the admissions are not unequivocal and absolute to pave way for a Judgment on admission.

37.1 The probable issues that may arise for consideration are:

a) Whether the suit property is divided among the parties on testamentary succession or intestate succession?

b) Whether the Will propounded by Defendant Nos. 4 and 5 is valid, legal and binding on the parties?

c) Whether Defendant No. 3 is entitled to succeed to Dr. Rajendra Kapila's share to the exclusion of Defendant Nos. 4 and 5?

d) Whether Dr. Rajendra Kapila could bequeath the share in the suit property in favour of Defendant No. 3 or not?

38. These are stated as available issues in the Suit however, it is for the Learned Single Judge to frame the issues. Though these are the probable issues, our expression may not be treated as issues framed by this Court but are adverted to emphasizing that pronouncing the judgment on admission in the case on hand, is erroneous and illegal. We notice that the Division Bench had straightaway assumed the existence of the Will and proceeded with interpreting the clauses in the Will. We notice the said approach begs the question and leaves more questions than answers. For the reasons already discussed, the decree and Judgment dated 10.05.2023 and 11.10.2022 are interfered with and set aside except the direction in Paragraph No. 45 of the Judgment dated 10.05.2022, and the matter is remitted to the Learned Single Judge for trial and disposal of O.S. No. 701/2021, uninfluenced by any of the findings rendered till the Judgment of this Court.

39. The above discussion takes us to the view expressed by the Learned Single Judge in directing the sale of property as set out in Paragraph No. 45 of the Judgment dated 10.05.2022 of the Learned Trial Court. I.A.17202/2021 was filed under Order XXXIX Rules 1 and 2 of the CPC and the jurisdiction independent

of the Partition Act 1893, to grant a prayer as made in the application is a moot question. Therefore, we hold and authorise the sale of the Suit Property without a Preliminary Decree in terms of Section 2 of the Partition Act, 1893.

39.1 The majority of the parties to the *lis* are either septuagenarian or octogenarian. We appreciate the need for speedy and timely adjudication of the issues between the parties. The finding in the Judgment dated 10.05.2022, wherein it is stated that even in the event of partition, division by metes and bounds cannot conveniently be carried out, it is not disputed or contested by the parties. We have excerpted the prayer in I.A. No. 17202 of 2021 above, and therefore, to avoid repetition, are not adverting to the prayer once again. The partition and apportionment in the case would be the proceeds realised from the sale of the suit property. Therefore, the directions issued in Paragraph No. 45 of the Judgment dated 10.05.2022 are adopted with a few additions and incorporated by allowing prayers made in I.A. No. 17202 of 2021 and made part of this Judgment. The additions made by us are shown in separate italics:

I. At first, the Local Commissioner shall take steps to get the property converted from leasehold to freehold.

II. The statutory fees/charges for conversion of the suit property from leasehold to freehold shall be borne by the plaintiffs and the defendants no.1 and 2 in proportion to their share in the suit property.

III. It is agreed that defendants no.1, 2 and 3 will execute a power of attorney in favour of plaintiff no.1 to sign all the requisite documents, forms,

applications, and the like for the conversion of the suit property from leasehold to freehold.

IV. The Local Commissioner shall be authorized to sign all the requisite documents, forms, applications, and the like on behalf of the defendants no.4 and 5 for the conversion of the suit property from leasehold to freehold.

V. The Delhi Development Authority (DDA) shall accept all the aforesaid requisite documents executed by the Local Commissioner on behalf of the parties for conversion of the suit property from leasehold to freehold.

VI. After conversion of the suit property from leasehold to freehold, the Local Commissioner will conduct a private sale of the suit property and the parties hereto shall be given the opportunity to participate.

VII. The Local Commissioner is requested to carry out the sale as finalized or found expedient within three months from receipt of a copy of the Judgment.

VIIA. (a) *The Local Commissioner is directed to initiate, conduct and complete the sale of the suit property by exploring all IT-enabled solutions such as (i) Group WhatsApp consisting of the Local Commissioner and the parties to the suit, (ii) An e-mail ID be opened to receive communication and correspondence not only with the parties and their Counsel, but also with the prospective bidders.*

(b) *The Local Commissioner will complete the said process of creating a WhatsApp Group and e-mail ID within one week from today.*

(c) *The Local Commissioner and the parties will explore the feasibility of hiring e-platforms that provide services for e-auction. Thereafter, the parties are directed and also given liberty to serve a work memo on the Local Commissioner, on the mode, manner (including paper publication, advertisement, minimum price, etc.) and method of conducting a private sale of the Suit Property.*

(d) *The Local Commissioner is directed to go by the consensus in suggestions arrived at between the parties.*

(e) *In the event of disagreement on any of the issues/suggestions in conducting the sale, etc., the Local Commissioner is given liberty to move and proceed as directed by the Court.*

(f) *The sale of Suit Property and the realization of proceeds are completed expeditiously, preferably within three months from receipt of a copy of the Judgment, the sale proceeds are deposited to the credit of CS (OS) No. 701/2021, for division and disbursement in terms of the Decree made therein.*

The Registry of this Court, communicates the copy of the Judgment to the Local Commissioner appointed by the Trial Court immediately.

VIII. In the event that the private sale is not successful, the Local Commissioner will take steps to auction the suit property under intimation by filing an interim report before the High Court of Delhi.

IX. The fees of the Local Commissioner is fixed at Rs. 5,00,000/- plus out of pocket expenses, shall be borne by the plaintiffs, the defendant nos.1 and 2 each twenty-five percent and Defendant Nos. 3, 4 and 5 put together twenty-five percent. In the event of one the claimants of Dr. Rajendra Kapila fails to contribute, the same is paid by the others to be adjusted or reimbursed subject to the outcome of their issues, in proportion of their share in the suit property in the first instance.

X. The fees paid to the Local Commissioner as well as any other statutory fees/charges paid towards conversion of the suit property from leasehold to freehold shall be recovered by the plaintiffs and the defendants no.1 and 2 from the sale proceeds of the suit property as a first charge.

XI. The parties to the suit shall render all assistance to the Local Commissioner in carrying out the aforesaid tasks.

40. We request the Learned Single Judge on remand to dispose of O.S. No. 701 of 2021 as expeditiously as possible, preferably within four months from receipt of a copy of this Judgment. We make the above observation keeping in perspective the age of the contesting parties.

41. By applying the settled position of law and ratio of the Judgments referred to in the preceding paragraphs, we are convinced, the Judgments impugned suffer

from a substantial error of law. For the above reasons, we are of the view that the impugned Judgments rendered on admission are liable to be set aside, accordingly set aside in the manner indicated above and the matter be remitted to the Learned Single Judge for framing issues and affording an opportunity of trial to the parties, to prove their respective cases and pronounce the Judgment.

42. It is contextual to note that in a suit filed for partition, the courts must endeavour to comprehensively adjudicate and decide the right entitlement and share of the parties in the same proceeding and must avoid multiplicity of proceedings or relegating parties to a fresh round of litigation. The partial adjudication in the circumstance of the case is erroneous and ought to have been avoided.

43. Accordingly, the Civil Appeal and I.A. No. 17202/2022 are allowed as indicated above. There is no order as to costs.

…….....J.
[ANIRUDDHA BOSE]

....…….....J.
[S.V.N. BHATTI]

NEW DELHI;
OCTOBER 10, 2023.