

Gulab Singh Vs. Dda and ors.

Gulab Singh Vs. Dda and ors.

SooperKanoon Citation : sooperkanoon.com/908408

Court : Delhi

Decided On : Jan-07-2011

Judge : Rajiv Shakdher, J.

Acts : [Land Acquisition Act, 1894](#) - Section 4; Delhi Development Authority Act, 1957 - Section 53(B); Limitation Act - Section 14 - Articles 59, 113

Appeal No. : CS(OS) No. 1099/1983; CS(OS) No. 1138/1987; CS(OS) No. 2996/1988

Appellant : Gulab Singh

Respondent : Dda and ors.

Advocate for Def. : Mr Ashok Kumar Sharma And Ors.

Advocate for Pet/Ap. : Mr. H.K. Sharma And Ors.

Judgement :

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

RAJIV SHAKDHER, J

1. I propose to dispose of the captioned suits by a common judgment for the reason that not only are all parties in the captioned suits [except the Delhi Development Authority (hereinafter referred to as DDA)] members of one family but also that the court, by order dated 05.09.1990 passed in FAO (OS) 280/1989, directed consolidation of the said suits, and the evidence by observing that evidence will be led in suit No. 2996/1988. In addition to this, property being: 17, Ashok Vihar Community Centre, Delhi 110 052 (hereinafter referred to as the Ashok Vihar Property), over which the core dispute centres, is common to the captioned suits. It is perhaps with this background that the court, by order dated 02.07.1996, passed in suit no. 2996/1988 framed common issues.

2. The first two suits, that is, suit no. 1099/1983 and suit no. 1138/1987 have been filed by the same person, i.e, one Gulab Singh, while suit no. 2996/1988 has been filed by his uncle (i.e., his fathers brother), namely, Har Chain Singh. For the sake of convenience, I will be referring to suit nos. 1099/1983, 1138/1987 and 2996/1988 as: the 1983 suit, the 1987 suit and the 1988 suit respectively. I would also be referring to the parties by their names since all of them are not arrayed in the same sequence in the three suits. RELIEFS SOUGHT IN THIE SUITS

3. In the 1983 suit Gulab Singh has sought partition and rendition of accounts in respect of properties mentioned in paragraph 2(a) and 2(b) and paragraph 5 of the plaint. Paragraph 5 of the first suit refers to properties which are described in clauses (a) to (e) of the said paragraph. In so far as property described in paragraph 2(a) of the plaint, is concerned the counsel for the plaintiff has, at the outset, said that the property mentioned therein has already been partitioned and, therefore, relief in respect of the said property is not pressed. In the 1987 suit the plaintiff Gulab Singh has sought a decree of declaration calling upon defendant nos. 1 to 3 (which includes DDA and its officers) to re-open the case of allotment in respect of the Ashok Vihar Property and cancellation of lease deed dated 26.09.1984 (in short lease deed) executed in respect of said property in favour of defendant no. 4, that is, Hari Singh, who is now represented by his legal heirs (in short LRs), that is, Satyender Singh, Jitender Kumar & Yudhisthar. The said LRs were impleaded vide order dated 11.10.2004 passed in the 1983 suit. The 1988 suit, which has been filed by the uncle of Gulab Singh, as indicated hereinabove,

i.e., Har Chain Singh is also directed against the grant of exclusive lease in favour of Hari Singh. Har Chain Singh in his suit (i.e., 1988 suit) seeks a decree of declaration to the effect that lease deed dated 26.09.1984 granted by DDA exclusively in favour of Hari Singh be declared illegal and void and, that DDA be directed to execute a fresh lease deed with respect to the Ashok Vihar Property in a manner that it reflects the purported 1/3rd share claimed by him in the said property.

4. The immovable properties in respect of which partition is sought are: Gitwar measuring 520 sq. yds. situated within the abadi of village Wazirpur, Delhi (Khasra No. 533) and at present bearing Plot No. 479, Shiv Market, Village Wazirpur (hereinafter referred to as Plot No. 479), 15 bighas and 8 biswas (Pukhta) land equivalent to 46 bighas and 14 biswas (kacha) situate within the revenue estate of village Jaibabad, Tehsil Sardhana, Distt. Meerut (U.P.) (hereinafter referred to as Jaibabad property) and the Ashok Vihar Property. It is pertinent to note that Ashok Vihar property was obtained admittedly against surrender of the property described in paragraph 2(c) of the plaint in the first suit. The description given therein reads as follows: Gitwar measuring 688 sq. yds. situate within the Abadi of village Wazirpur, Delhi (Khasra No. 533).

4.1 The bone of contention being that on the said property being surrendered the allotment of the Ashok Vihar property was made by DDA exclusively in favour of Hari Singh, which was, followed by a lease deed dated 26.09.1984; in the 1987 and the 1988 suits, it is this lease deed which is impugned.

5. I may also note at this stage one crucial fact which is that when the 1983 suit was filed Gulab Singh was contesting (as is evident from the pleadings filed in the said suit) against all the four siblings which included Hari Singh, Rajbir Singh, Mahesh Kumar & Ramesh Kumar. This situation took a turn by the time the 1987 and 1988 suits were filed; at that point in time the only party, which contested his claim and continues to do so are the LRs of Hari Singh. The other siblings of Gulab Singh have filed written statements which support the case of Gulab Singh set up in the 1987 suit and the defence taken by him in the 1988 suit. The deposition, however, of Mahesh Kumar, Rajbir Singh and Ramesh Kumar are

supportive of the case set up by Gulab Singh both in 1983 as well as 1987 suit. Therefore, the only contesting defendants in all the three suits are the legal representatives of Hari Singh. As a matter of fact, the DDA in the proceedings before court held on 09.12.1999 took the stand that they would abide by whatever decision that the court took vis-a-vis Ashok Vihar property, in respect of which, as noticed above, an allotment followed by a lease deed has been executed by DDA exclusively in favour of late Hari Singh.

6. Before I proceed further, it would help to delineate very briefly the genealogical details of the family:

Shri Ram Lal (deceased)

FATHER

Sh. Ramchander Sh. Har Chain Singh Sh. Raghunath Singh Died on 15.09.1960
Died on 13.11.2004

Sh. Hari Singh Sh. Barhm Prakash

Died on 29.05.2003

Satyender Singh

Sh. Ved Prakash

Jitender Sh. Om Prakash

Yudhister Sh. Hari Prakash

Sh. Gulab Singh Sh. Krishna

Sh. Rajbir Singh

Sh. Shiv Prakash

Sh. Ramesh Kumar

Sh. Mahesh Kumar

7. The facts in the three suits, as indicated hereinabove, are common. In so far as the first two suits are concerned, together they represent the claim of Gulab Singh in respect of the property belonging to the family. As also noticed hereinabove, the 1987 and 1988 suit pertain essentially to the execution of lease deed vis-a-vis one of the immovable property, i.e., Ashok Vihar Property. Late Har Chain Singh (now represented by LRs) was the uncle of Gulab Singh; claimed by way of the 1988 suit 1/3rd share in the Ashok Vihar property. It is in this context, I proceed to examine the case set up by Gulab Singh in the two suits (i.e., 1983 & 1987 suits) and that by Har Chain Singhs LRs in the third suit (i.e., 1988 suit). THE PLAINTIFF'S CASE IN THE FIRST AND SECOND SUIT

8. In the plaint, it is averred that, upon death of Sh. Ramchander on 15.09.1960 Gulab Singh along with his brothers inherited the agricultural lands at village Wazirpur, Delhi along with the houses and gitwars situate in the abadi deh; forming part of Khasra Nos. 531 and

533. Upon demise of Ramchander, it is averred, a Hindu Undivided Family (hereinafter referred to as HUF) came into existence, which was referred to as M/s Hari Singh & Brothers. Hari Singh being the eldest, was appointed Karta of the HUF. The properties which formed part of the HUF, are ones which are described in paragraph 4 above in addition to another property being: House No. 297 admeasuring 111 sq. yds. situate within the Lal Dora of village abadi Wazirpur, Delhi (Khasra No. 531). As indicated above, no relief is presently sought against this property, as this property, as per Gulab Singh, already stands partitioned.

9. It is also averred that another immovable property being House No. 456 appurtenant to a total land admeasuring 615 sq. yds. situate within the old abadi of village Wazirpur and forming part of Khasra No. 533 was also partitioned in the year 1972-73. Upon partition, it is averred, each of the parties were given their shares and, consequently, some of them built their separate houses on the said property. As regards to other properties, which are described in the plaint admeasuring 40 bighas and 11 biswas of agricultural land comprised in Khasra Nos. 115, 138, 140, 149, 156, 167, 173, 174, 229, 312, 313, 336/1/1, 746/348, 750/349, 360 and 380; and another property admeasuring 8 bighas 16 biswas of

land comprised in Khasra Nos. 509 and 662 to the extent of 1/3rd share situate within the revenue estate of village Wazirpur, Delhi was subject matter of acquisition proceedings. Consequent thereto, it appears, two awards bearing nos. 1231 dated 30.11.1961 and 1329 dated 30.05.1962 were passed; as a result of which compensation was received which was shared in equal proportion by Gulab Singh and his four brothers.

9.1 It is the case of Gulab Singh that on account of the aforesaid events the family is left with only two immovable properties, i.e., Jaibabad property [paragraph 2(b) of the plaint] and the Ashok Vihar property. The relief of partition by Gulab Singh is, therefore, sought in respect of these two immovable properties and a right to claim alternative plots in lieu of agricultural properties acquired vide award no. 1231 and 1329. Besides this, a share is also sought in a sum of Rs 80,000/- lying deposited in the Reserve Bank of India, Parliament Street, New Delhi and, a sum of Rs 110/- lying in the account of HUF, that is, Hari Singh & Brothers with the Bank of India, Ashok Vihar, New Delhi 110 052.

9.2 In so far as the Jaibabad property is concerned the plaintiff Gulab Singh has averred that the said property was purchased in July, 1975 in the name of Gulab Singh, Ramesh Kumar and Mahesh Kumar under two registered sale deeds.

9.3 However, with respect to claim made by Gulab Singh vis-a-vis alternative plots which Gulab Singh along with his brothers is entitled to and, which were subject matter of award nos. 1231 and 1329 there is hardly any opposition for the reason that in so far as the alternative plots are concerned it is not denied that the compensation received in respect of said plots was shared equally between Gulab Singh and his brothers way back in 1961-62. As would be clear, from my narrative hereafter, that in 2010 an alternative plot has been allotted in Rohini, jointly in the name of all persons, i.e., Gulab Singh, Ramesh Kumar, Rajbir Singh, Mahesh Kumar and LRs of late Hari Singh.

9.4 In so far as Jaibabad property is concerned even though it was purchased in the names of Gulab Singh, Ramesh Kumar and Mahesh Kumar, it would stand to reason that the Gulab Singh would be willing to part with the shares to Rajbir Singh and LRs of Hari Singh, though the LRs of Hari Singh allege that Ramesh

Kumar and Mahesh Kumar have sold their shares in the said property.

9.5 The core dispute therefore essentially revolves around the Ashok Vihar property. Gulab Singh in respect of Ashok Vihar property has taken the stand in his pleading that till May-June, 1972, he along with his brother was carrying on business of manufacturing chemicals, in a factory, run under the name and style of M/s Capital Chemicals. The entire land which admeasured 688 sq. yds., according to Gulab Singh, fell in Khasra No. 533, and in years ahead became a subject matter of the dispute with the police officials of police station Sarai Rohilla village Wazirpur. It is alleged that since the police officials attempted to illegally occupy their land, a suit was filed being: suit no. 415/1972 to which, the five brothers joined as plaintiffs. What is of significance is that along with the suit, a site plan was filed. The land in question was marked in colour red on the site plan. This suit, whereby relief of injunction and damages was sought was, however, withdrawn as evidently assurances were given by the police officials that they will not interfere with the possession of that plaintiffs, i.e., Gulab Singh and his four brothers.

10. Around this time Gulab Singh, alongwith his four brothers, and 25 other persons (in all 30 petitioners), who belonged to the village Wazirpur sought to impugn the notification dated 13.11.1959, issued by the Chief Commissioner of Delhi under Section 4 of the [Land Acquisition Act, 1894](#) (hereinafter referred to as the LA Act) by filing a writ petition. By this notification it was proposed to acquire the land/ gitwars within the abadi deh of village Wazirpur. The writ petition was filed in this court, in 1973. The writ petition was numbered as WP(C) No. 376/1973. Once again, along with the writ petition, a site plan was filed wherein, the land in issue over which plaintiffs family had possession was earmarked. The said land evidently is shown in the shape of a "rectangle" in the top of right corner of the site plan, and is marked with red coloured diagonal lines.

11. By an order dated 09.05.1973, an interim stay was granted restraining DDA from dispossessing the petitioners. It is alleged that contrary to the order of stay dated 09.05.1973, DDA, in 1981, sought to encroach upon the land. To remedy this, Hari Singh along with Gulab Singh and other brothers filed an interlocutory application being CM No. 332/1981, on 30.01.1981. Alongwith the said application,

once again a site plan was filed which, earmarked the land against which, the Ashok Vihar Property was subsequently allotted.

12. By an order dated 04.02.1981 in CM No. 332/1981 a status quo order was passed by the court. Since this order was violated, it is averred another IA being CM No. 656/1981 was moved before this court on 02.03.1981. In this application, specifically, an injunction was sought against the officials of DDA. This application was disposed of vide order dated 09.03.1981 whereby, evidently injunction sought was granted. It transpires that pending disposal of the CWP 376/1973, DDA approached the petitioners for a compromise. From this juncture the actions taken by Hari Singh (which resulted in the allotment and subsequently a lease being made in his favour) are impugned by Gulab Singh in the 1987 suit filed by him. It appears that DDA by a letter dated 25.05.1982 formally offered to allot a plot against the land (which Gulab Singh says belongs to the HUF) with a condition that the allotment would be made only upon the writ petition pending in the High Court being withdrawn. It appears that Hari Singh, at this stage, moved an application being: CM No. 3577/1982 whereby, variation of the order was sought. The court by order dated 05.08.1982 varied its order dated 09.05.1973 by granting liberty to DDA to build a police station. Consequently, on 30.07.1982 the DDA issued a letter of allotment in respect of Ashok Vihar property in favour of Hari Singh. The allotment was subject to payment of premium in the sum of Rs 3,27,600/-. Admittedly, DDA was paid the premium. As a result, DDA executed a lease deed dated 26.09.1984; albeit exclusively in favour of Hari Singh. Gulab Singh has impugned the execution of the lease deed in favour of Hari Singh on several grounds: (i) that the writ petition (CWP 376/1973) whereby, the acquisition notification dated 13.11.1959 was impugned, instituted had, amongst others, Gulab Singh and the other four brothers arrayed as writ petitioners; (ii) the land against which allotment was made fell in the HUF fold; (iii) the premium paid in the sum of Rs 3,27,600/- for allotment of Ashok Vihar property, was paid out of the HUF funds; (iv) the business on the said land, in the name and style of M/s Capital Chemicals was carried out till 1972 by Gulab Singh and his brothers together; which included Hari Singh; (v) in the pleadings filed in court, in particular, in the pleadings pertaining to CWP No. 376/1973; Hari Singh himself has averred that the property against which Ashok Vihar property was allotted was owned by all five

brothers. In this regard, reference was made to averments made in the writ petition CWP No.376/1973, averments made in the CM No.3577/1982 filed in CWP No.376/1973, and the averments made in the reply filed by Hari Singh to CM No. 592/1982 also filed in CWP 376/1973 by late Har Chain Singh.

13. Since the main contestant in the 1983 and 1987 suit is Hari Singh it would be relevant to briefly notice the stand that he has taken vis-a-vis the assertions of Gulab Singh. First and foremost, Hari Singh (who is now represented through his LRs) has contended that the property surrendered in lieu of Ashok Vihar property was neither a HUF property and nor was the property in possession of Gulab Singh. An objection has been raised with regard to the maintainability of the suit as framed. It is Hari Singh's stand that Gulab Singh should have sued for declaration and possession; having not done so, the plaint is liable to be rejected under the provisions of Order 7 Rule 11 of the CPC. It is averred by Hari Singh that on the death of their father Ramchander, the agricultural properties in the family fold, devolved on his sons, and their sisters and mother. The mother and the sisters executed release deeds in their favour. After the properties were acquired compensation was distributed amongst the brothers which was taken by them in their individual capacity. The HUF, according to Hari Singh, got formed only thereafter, evidently on demonitisation of thousand (1000) rupee currency notes; since family had eighty (80) currency notes of thousand (1000) rupee denomination in its possession. It is then, according to Hari Singh, that the HUF Hari Singh & Brothers was formed. Being the eldest, it is averred, Hari Singh was appointed as the Karta. However, de facto the affairs of the family were managed by Gulab Singh. In this connection, it is also averred that CWP No. 376/1973, which was instituted to challenge the acquisition proceedings, was instituted in the name of Gulab Singh and others and, that it was Gulab Singh, who was looking after the litigation. It was, therefore, averred that it was only after the HUF was disrupted, that Hari Singh took interest in the litigation (i.e., writ proceedings) and moved applications, in his individual capacity. In respect of the properties referred to in paragraphs 2(a) (d) and (e) of the plaint, Hari Singh accepted that these properties were inherited by him along with his siblings. However, in respect of properties mentioned in paragraphs 2(b) and (c) of the plaint, Hari Singh took the stand that these vested in the gaon sabha, and that compensation in respect of

acquisition of the said property was claimed by the goan sabha through its pradhan Ram Sarup. It is specifically averred that in so far as property mentioned in paragraph 2(c) is concerned there has been no claim made for compensation by either the brothers or, by anyone else. However, it has been emphatically stated that property referred to in paragraph 2(c) of the plaint has been in possession of Hari Singh since 1959. It has been said in this connection that Hari Singh was carrying on sole proprietorship business in the name and style of Capital Chemicals on the said property.

13.1 It is also the stand of Hari Singh that properties referred to in paragraphs 5(a), (c) and (d) were jointly acquired from compensation received against properties referred to in paragraphs 2(e) and (f) of the plaint. As indicated above, what is denied is that properties referred to in paragraphs 2(b) and (c) of the plaint were HUF properties. In connection with properties referred to in paragraph 2(c) of the plaint, he specifically took a stand in the written statement, that this was a property in his exclusive possession, and that he had paid the DDA, a sum of Rs 3.27 lacs towards premium from his individual resources and not, as alleged, out of the funds of the HUF, to purchase the Ashok Vihar property in lieu thereof. The same position was taken vis-a-vis the super-structure constructed on the Ashok Vihar property. It is, however, stated that since the expenses to preserve the property, referred to in paragraph 2(c) of the plaint, was incurred by Hari Singh, and also, as he was carrying on business from the said piece of land Gulab Singh along with his other three brothers executed a release deed in his favour. It is important to note, while on the issue of the release deed, that Hari Singh has averred that Gulab Singh along with Rajbir Singh, Mahesh Kumar and Ramesh Kumar had also applied for allotment of alternative plot. The application of Hari Singh being the only one which was apparently filed in time, he was therefore the only one entitled to an alternative plot. In relation to the application of Gulab Singh and other three brothers (i.e., Rajbir Singh, Mahesh Kumar and Ramesh Kumar), it is averred as follows:

"The plaintiff and defendants no. 2 to 4 have already relinquished their rights in favour of the Answering Defendant realizing that their applications were barred by time and would be dismissed due to that reason, and as such the right to have the

alternative plot allotted is the individual and sole right of the Answering Defendant and no other member of the family has any claim over the same." (emphasis is mine)

13.2 As regards the institution of the suit bearing no. 560/1974, entitled Gulab Singh & Ors. vs Piara Singh & Ors., Hari Singh took the stand that even though he had joined his brother in instituting the suit in respect of land admeasuring 688 sq. yds., i.e., the property referred to in paragraph 2(c) of the plaint, the same was done under a mistaken belief. He goes on to state that the property in issue vests in the gaon sabha as was evident from the revenue records since Hari Singh was carrying on business from the said piece of land, he had possessory rights over the said property and not the proprietary rights. Though, as indicated above, he claimed exclusive rights to the exclusion of all other brothers including Gulab Singh. Reliance in this regard was placed on an affidavit of Gulab Singh dated 05.01.1982 filed in CWP No. 376/1973. Hari Singh has stressed in his pleadings that in the said affidavit, Gulab Singh has categorically accepted the fact that Hari Singh was carrying on his proprietorship business in the name and style of M/s Capital Chemicals from the said piece of land since 1959.

13.3 I may also note the averments made by Hari Singh in his written statement filed in 1987 suit. Hari Singh took the stand that with the enactment of the Delhi Land Reforms Act, 1984 (hereinafter referred to as DLR Act) the ownership in the land in question ceased. Since, Gulab Singh was neither a bhoomidar nor a aasami, he had no right to the land in question which admeasured 688 sq. yds. and fell in khasra No. 533/1, village Wazirpur, Delhi. It was the possession of this land, which was surrendered in favour of DDA and the Police Authorities, against which, Hari Singh was issued the allotment letter dated 30.07.1982. Therefore, it is pleaded that Gulab Singhs 1987 suit seeking revocation of the allotment and cancellation of the lease not being based upon either a right or title ought to be dismissed.

13.4 It is further contended that the 1987 suit for cancellation of the lease deed dated 26.09.1984, was barred by limitation prescribed under the provisions of Section 53(B) of the Delhi Development Authority Act, 1957 (hereinafter referred to

as DDA Act). The land in question vested in the gaon sabha during the life time of their father Ramchander. Since the land in issue was not included in the rural areas by any notification, all such properties, including land in question which were enjoyed and possessed by goan sabha, vested in the Central Government. In other words, the stand taken was that, the land in question was not a HUF property entitling Gulab Singh to claim the property, and consequently, seek cancellation of the lease deed qua the Ashok Vihar Property. It is further stated that on the land in question (which fell in Khasra No. 533/1 of village Wazirpur, Delhi) being vested in the gaon sabha, pursuant to the enactment of the DLR Act, a challenge was laid by way of a suit bearing no. 339/1958, which was instituted in the court of Sh. C.V. Vashisht, the then Sub-Judge of Delhi. In the said proceedings Ramchander along with his five sons (which included Gulab Singh and Hari Singh) were arrayed as parties. By virtue of the decree of partition being passed a portion of the land falling in Khasra No. 533 fell to the share of the family. A second suit being: suit no. 386/1959 entitled Shri Munshi & Ors. vs Gaon Sabha was filed to challenge the vesting of land falling in Khasra No. 533/1 of village Wazirpur, Delhi in the goan sabha. This suit was filed in the court of Sh. Gian Inder Singh, the then Senior Sub-Judge-III, Delhi. By virtue of a judgment dated 17.03.1961, land admeasuring 14 bighas 16 biswas out of a total of 19 bighas 16 biswas reverted to the plaintiffs in the said suit, which included late Ramchander. The matter was carried in appeal. The then Senior sub-Judge, Delhi, Sh. K.S. Sidhu in appeal directed divestment of an additional 5 bighas in favour of the appellants. It is averred that the goan sabha of Village Wazirpur had also preferred an appeal, which was dismissed since it had failed to implead the legal representative of the deceased defendants. It is further averred that the Union of India filed a civil revision no. 154/1969 in this court. The said revision petition was dismissed by order dated 24.12.1976 based on the statement of the counsel for the Union of India that they would treat the decree passed by Sh. K.S. Sidhu as void and without jurisdiction. It is the contention of Hari Singh that order dated 24.12.1976 reversed the orders passed by Mr. K.S. Sidhu and Mr Gian Inder Singh, Sub-Judge. This aspect has been contested by Gulab Singh and the other three siblings of Hari Singh. Hari Singh further contends that in the revenue records even today despite the orders of Sh. Gian Inder Singh, Sub-Judge and Sh.

K.S. Sidhu, Senior Sub-Judge the land admeasuring 19 bighas 16 biswas in Khasra No. 533, village Wazirpur, Delhi is shown in the name of the gaon sabha.

13.5 It is further averred by Hari Singh, that Gulab Singh and other three brothers executed a release deed as they were firstly, aware that the land in issue was a property of the gaon sabha/ Central Government; and secondly, there was no hope of getting an alternative property in lieu thereof as the local authority and the police were involved in the matter. It is the contention of Hari Singh that the land in issue admeasuring 688 sq. Yds. was acquired in the year 1974 vide award no. 90A/1974-75(Suppl) dated 31.12.1974 while, the alternative plot, on the other hand, was allotted in 1982 and, therefore, was not in lieu of the land acquired by the Government. In so far as the Hari Singhs stand as to why he had filed CM No. 3577/1982 in CWP 376/1973, he has averred that this was filed at the instance of Gulab Singh and his other three brothers to obtain modification of the order dated 09.05.1973. Similarly, as regards the issue concerning his stand in the affidavit-in-reply filed in response to CM No. 5921-5922/1982 filed in CWP No. 376/1973 in turn by Har Chain Singh Hari Singh stated that this application was dismissed by this court on 20.04.1983. Har Chain Singh carried the matter in appeal to the Supreme Court. The Special Leave Petition was also dismissed, and thereafter, Har Chain Singh filed an application in the revenue court for correction of khasra girdawari of the land in question. Gulab Singh who has been made a party by Har Chain Singh in those proceedings; was served. He did not assert his rights in the land; on the contrary the Patwari appeared and deposed that, the land in question was a gaon sabha property. It is specifically stated that the Ashok Vihar property was allotted solely in the name of Hari Singh. Hari Singh has also submitted that the correspondence exchanged by Gulab Singh with DDA in respect of the allotment of Ashok Vihar property in his favour was malafide and based on a rethink carried on only to somehow extricate himself from the release deed executed in his favour.

14. Before I proceed further let me briefly state the case of Har Chain Singh as set out in 1988 suit whereby he has challenged, as indicated above, the execution of the lease deed by DDA on 26.09.1984, in favour of Hari Singh. Briefly, Har Chain Singh has traced his right to his father late Ram Lal by claiming that he owned and

possessed agricultural land in village Wazirpur in khasra no. 533. It is averred that the total area of land falling in khasra no. 533 was 23 bighas and 10 biswas and late Ram Lal, i.e., his father had $11\frac{1}{2}$ share out of the total eight shares. This he says is depicted in the jamabandi of 1950-1951. It is further averred that after the death of his father namely Ram Lal, his share of the land came to be possessed by his three sons including Har Chain Singh in equal measure. Similarly, it is averred, that after the death of Ramchander, Gulab Singh and his brothers inherited Ramchand's share of the agricultural land including that which fell in Khasra no. 533. It is also averred that out of the total area of 23 bighas 10 biswas, 3 bighas and 14 biswas was in possession of various co-sharers and his father late Ram Lal possessed 12 biswas out of 3 bighas and 14 biswas in khasra no. 533; which was used as gher and gitwar even prior to 1950-51. There is in his suit an averment to the effect that late Ramchander, Har Chain Singh, Raghunath and some other co-sharers in land falling in khasra no. 533 sued for partition. A decree for partition was passed by Mr C.D. Vashisht, the then Sub-Judge. Pursuant to the decree Ramchander, Raghunath and Har Chain Singh jointly obtained as their share 2 bighas and 13 biswas. It is further stated that pursuant to the enactment of DLR Act the land vested in goan sabha; however, on suits being filed the Sub-Judge Gian Inder Singh ordered release of land from gaon sabha to the extent of 14 bighas and 16 biswas. There is also a reference to the judgment of Mr K.S. Sidhu, Senior Sub-Judge who evidently released another five bighas of the land in issue. What is significant is that in paragraph 9, it is averred that land admeasuring 2 bighas and 13 biswas fell to the share of Har Chain Singh, Ramchander and Raghunath. On partition, each had $\frac{1}{3}$ rd share in the said land. There is also reference to the fact that an acquisition notification dated 13.11.1959 was issued in respect of land falling in khasra no. 533 under Section 4 of the LA Act, 1894. This was followed by a notification under section 6 being issued on 2.01.1986. Har Chain Singh also refers to the fact that in 1973 he along with Gulab Singh and his brothers which included Hari Singh and other similarly circumstanced persons, in all totaling 30, challenged the notification of acquisition by way of a writ petition being: CWP 376/1973 entitled Gulab Singh & Ors. Vs UOI. It is specifically stated that the portion of the land which was sought to be acquired, and which fell within khasra no. 533, was referred to as khasra no. 533/1 after partition. Therefore, in

this context, it was claimed that Har Chain Singh along with Raghunath and his brothers and his nephews, Gulab Singh, Hari Singh, Rajbir Singh, Mahesh Kumar and Ramesh Kumar had equal right in land admeasuring 2 bighas and 13 biswas falling in khasra no. 533/1 which was sought to be acquired by the Government of India vide the aforesaid acquisition notification. There is a reference to the stay order obtained in the said writ petition proceedings, i.e., CWP No. 376/1973 whereby, the court in its order dated 09.05.1973 directed that the "acquisition proceedings could go on pending disposal of the writ petition, but the petitioners shall not be dispossessed from the property in dispute.....". 14.1 It is also stated that the official respondents encroached upon land and attempted to raise a construction on that part of the land which is shown in red colour in the site plan appended to the said writ petition (i.e, CWP 376/1973) and CM No. 332/1981 filed in the said writ petition and enclosed in rectangular marked within points C, D, E and F. There is also a reference to a second application being: CM No. 656/1981 filed in the said writ petition whereby, evidently once again injunction was sought. It is stated that the writ petition was filed through a common counsel, who represented all petitioners, which included Hari Singh. It is also averred that since there was no stay on the acquisition proceedings the Land Acquisition Collector (in short LAC) announced the award, and that in the naksha muntajamin Har Chain Singh along with his nephews and his brother Raghunath is shown as having equal share in land falling in Khasra No. 533/1. On this basis Hari Singh claims he was entitled to equal compensation. He has also averred that a common claim petition was filed before the LAC showing therein three sets of persons as claimants, which included Hari Singh, his nephews and his brother Raghunath. In so far as the relief in the petition is concerned in paragraph 22 of the plaint it is specifically averred that Hari Singh in collusion with the DDA officials entered into a secret arrangement which was not known to him, and consequently, got the land allotted in his favour by moving application no. 3577/1982 in CWP No. 376/1973 (seeking modification of the stay). It is specifically stated that the application was signed only by Hari Singh in disregard to the interest of Har Chain Singh and his nephews, who are parties to the proceedings. It is further submitted that since a common counsel was engaged, this position could not be brought to the light before the court, and the court by an order dated 05.08.1982 permitted

construction of police station on land falling in Khasra No. 533/1 in which he (i.e., Har Chain Singh) also had a 1/3rd share. Har Chain Singh has, however, adverted to the fact that he had moved an application being 5921/1982 in CWP No. 376/1973 for recall of order dated 05.08.1982. He also states quite candidly that the said application was dismissed by a Single Judge of this court on 20.04.1983, and that the Special Leave Petition preferred against the said order met the same fate. 14.2 It is further averred that since he was advised to move the Tehsildar for seeking declaration that he had interest in khasra no.533/1 to the extent of 1/3rd; he perused the said remedy. In sum and substance Har Chain Singh submits that since he had 1/3rd share in land falling in khasra no. 533/1, any allotment of land by DDA in lieu thereof, could not have been done without his consent, and that in any event, he would have 1/3rd share in the Ashok Vihar property, which is allotted in lieu of his share of the land falling in khasra no. 533/1. 14.3 Har Chain Singh, however, in paragraph 29 says that once he came to know that lease deed had been executed in favour of Hari Singh, he made a representation to the DDA vide a communication dated 18.12.1985. To be noted the exact date of his knowledge is not revealed in the said paragraph qua the allotment of the land. It is averred that in view of the fact that the DDA had not responded to his representation, Har Chain Singh took recourse to the said suit.

15. In respect of the reliefs claimed in the 1988 suit by Har Chain Singh, Hari Singh took the following stand: The suit was barred by limitation in view of the fact that Har Chain Singh himself, in application being CM No. 5921/1982 dated 07.12.1982 filed in CWP No. 376/1973, had claimed that he had knowledge of the allotment of Ashok Vihar property in favour of Hari Singh as far back as on 27.10.1982. Hari Singh claimed that the allotment was made in his favour on 30.07.1982 and the lease deed was executed on 26.09.1984. Therefore, the suit filed impugning the allotment and the lease deed were clearly beyond period of limitation of three years; and hence, the suit was not maintainable. The suit was bad for non- joinder of parties, since the Union of India had not been impleaded as party which is a necessary party to the present proceedings. The reason, according to Hari Singh, which makes Union of India a necessary party is, that the relief sought in the 1988 suit is for cancellation of the existing lease and issuance of direction for grant of a lease in favour of Har Chain Singh to the extent of his

1/3rd share. There is also a challenge to the maintainability of the suit on the ground that since Har Chain Singh claims to be an owner of the part of the land, and has alleged that property admeasuring 688 sq. Yds. was wrongly surrendered by Hari Singh in favour of DDA and other authorities without his consent; he ought to have sued for possession and not for cancellation of lease deed.

16. In so far as Gulab Singh and his other brothers are concerned, they had filed a written statement in the 1988 suit, which is, more or less similar in nature. They have disputed that Har Chain Singh had a share in the land falling in khasra no. 533/1. To that extent their stand is similar to Hari Singh however, they have agreed that Hari Singh, without the knowledge of the other writ petitioners, got the Ashok Vihar property allotted in his favour. While they accepted the fact that the total area of khasra no. 533/1 is 23 bighas and 10 biswas they disputed Hari Singh's stand that his father had 11/2 share out of eight shares in the land falling in Khasra no. 533. They also denied that land falling in khasra no. 533 was agricultural land. Their stand being that land falling in khasra no. 533/1 was gher gitwari and abadi deh land. They also disputed the stand of Har Chain Singh that Ram Lal occupied 12 biswas out of 3 bighas and 14 biswas prior to 1950-51 purportedly as per jamabandi of the year 1950-51. They have, however, took the stand that passing of a partition decree by Sh. C.D. Vashisht in respect of land falling in khasra no. 533 was a matter of record. However, it was their contention that none of the co-owners were in possession of the land as per the schedule attached to the said partition decree passed by Sh. C.D. Vashisht, the then Sub-Judge, Delhi. They also denied that land admeasuring 2 bighas and 13 biswas came to the share of Har Chain Singh, and his two brothers, or that any other piece of land including the one mentioned in the plaint was divided amongst Har Chain Singh, his brother Raghunath and his nephews, i.e., Gulab Singh, Hari Singh, Rajbir Singh, Mahesh Kumar and Ramesh Kumar. They further averred that land which was shown in the site plan in red colour was in their exclusive possession; while that part of the land which was adjacent to one marked in red, fell equally to the share of Har Chain Singh, his brother Raghunath and, his nephews.

17. In so far as the defence set up by other brothers of Gulab Singh is concerned, namely, Mahesh Kumar, Rajbir Singh and Ramesh Kumar, they have, as noticed hereinabove, in the 1983 suit opposed the stand taken by Gulab Singh and supported the case of Hari Singh. Whereas, in the 1987 suit they have supported the case of Gulab Singh. As a matter of fact the written statements filed by Rajbir Singh, Ramesh Kumar and Mahesh Kumar in 1983 suit are more or less similar in language as that filed by Hari Singh. Similarly, there is an identity of stand with Gulab Singh in the written statements filed by Rajbir Singh, Ramesh Kumar and Mahesh Kumar in the 1987 suit. In so far as the 1988 suit is concerned, Rajbir Singh, Ramesh Kumar and Mahesh Kumar have supported the case set up by Gulab Singh and to some extent the stand of Hari Singh. Therefore, having referred to Gulab Singh's stand in the 1983, 1987 and 1988 suit, I do not intend to detail out the stand of Rajbir Singh, Ramesh Kumar and Mahesh Kumar as it would make the narrative unnecessarily prolix. REPLICATION

18. In the replication filed by Gulab Singh in 1983 suit, he re-emphasized the existence of HUF by stating that the HUF came into existence immediately after the death of their father Ramchander and not, as averred by the defendant after the demonetization of thousand (1000) rupee currency notes by the Government of India. The emphasis on the fact that the HUF continued was sought to be established by relying upon the following:

(i) that in paragraph 4 of the affidavit-in-reply filed by Hari Singh in reply to CM No. 5921/1982 (filed by Har Chain Singh) in CWP No. 376/1973 evidently he himself had taken the stand that, he along with his brother were the "owners in possession" of the land which was subject matter of the writ petition and were carrying on business in the name and style of M/s Capital Chemicals since 1965;

(ii) that Hari Singh had been issuing rent receipts to the tenants in respect of house No. 479, Wazirpur, Delhi in the name of the HUF even after the execution of the release deed; (iii) that in the release deed Hari Singh has been described as the first son, manager and Karta of the HUF, therefore, the stand taken that the HUF ceased to exist prior to the execution of the release deed, was not quite correct;

(iv) that the fact that the HUF was in existence was clear from a perusal of the challan issued by the Income Tax Department which is filed by Hari Singh as an annexure H to his written statement. Specifically, it was denied that the properties referred to in paragraph 2(b) and 2(c) of the plaint were not inherited by the family, and that the said properties during the life time of their late father had vested in the gaon sabha. It was stressed in the written statement (i.e., in paragraph 5) that there is a specific mention that the property mentioned in paragraph 5(a), (c) and (d) of the plaint were purchased out of the compensation received qua properties; referred to in paragraphs 2(e) and (f) of the plaint, acquired under the LA Act; (v) that the HUF continues to maintain a current account in the Bank of India, Ashok Vihar Branch (in short BOI) and as on 15.09.1983 had a credit balance of Rs 3,80,971.70/-; (vi) apart from the above, it was also stressed that the properties referred to in paragraph 5(a) and (b) (being the Ashok Vihar property) was acquired out of the HUF funds. Apart from the above, there were two other aspects which were stressed ; the first one being: that since the properties referred to in paragraph 2(b) and (c) vested in gaon sabha, compensation was claimed only by gaon sabha. Therefore, Gulab Singh whilst not denying that the compensation in respect of the said property was claimed by the gaon sabha, emphasized that an application for compensation was also preferred by Gulab Singh and his siblings. (vii) Similarly, in respect of the release deed, Gulab Singh went on to deny that he and his brothers, i.e., Rajbir Singh, Ramesh Kumar and Mahesh Kumar had executed the said release deed relinquishing thereby their rights over the property mentioned in paragraph 2(c) of the plaint, in lieu of which, the Ashok Vihar property has been obtained by defendant no. 1 (now represented through his LRs). Gulab Singh has refuted the stand of Hari Singh/ his LRs as regards the release deed disentitling him from claiming a partition in the 1983 suit on the following grounds: (a) that the area referred to in the release deed was not the area which had come to the share of their late father. In the release deed the area referred to is 1639 sq. yds. whereas, according to Gulab Singh after a decree was passed in civil suit no. 338/1958 decided by Sh. C.V. Vashisht, the then Sub-Judge, Delhi the land which fell to the share of Ramchander was only 1095 sq. yds. (b) a reference was made to the reply dated 07.01.1983 filed by Hari Singh to CM No. 5921/1983 filed by Har Chain Singh in Civil Writ Petition 376/1973.

Reference was made to averments, in this reply, by Hari Singh to the effect that Hari Singh along with his brothers, which included Gulab Singh, were sole "owners in possession" of the land which was subject matter of the writ petition. Since the Ashok Vihar property was allotted in lieu of the very portion which is marked in Red in the plaint appended as annexure F to the writ petition, it could not be said that Ashok Vihar property did not continue in the HUF. (c) that in none of the applications and replies filed by Hari Singh in Civil Writ Petition No. 376/1973; did he ever take the stand that he was the sole and absolute owner of the property in issue pursuant to the execution of the purported release deed. (d) No application whatsoever was moved by Hari Singh in Civil Writ Petition 376/1973 for deletion of Gulab Singh and other brothers from the array of parties by basing his claim on the release deed. In this regard, support was taken of averments made in application bearing no. 2356/1983 in Civil Writ Petition 376/1973 wherein, once again the stand taken is that the land in issue was owned by Hari Singh along with his brother, including Gulab Singh; and (e) Lastly, the release deed does not describe the property, but only refers to an area of land admeasuring 1639 sq. yds., which, according to Gulab Singh, is not the correct area. Thus, in other words the release deed neither related to the land which was subject of the writ petition 376/1973 nor to the properties which are subject matter of the 1983 suit.

18.1 I must also notice that Gulab Singh has made two specific points with regard to the claim of ownership over the plot of land which is described in paragraph 2(c) of the plaint and, subsequently, as indicated above, the Ashok Vihar property was allotted to Hari Singh in lieu thereof. The first point that Gulab Singh makes in his replication is that M/s Capital Chemicals was a business which was carried on jointly by the HUF and since Hari Singh was the eldest and the Karta of the HUF, he maintained the accounts and the records of the business. The only source of income of the HUF (apart from compensation received on sale of acquisition of properties) was the business carried on in the name and style of M/s Capital Chemicals. The second point on which emphasis was laid was that even though in CWP 376/1973 whereby, the acquisition notification (with respect to the property falling in khasra no. 533/1 and also referred to in paragraph 2(c) of the plaint) was impugned by Hari Singh along with his brothers and 25 other petitioners in the portion marked in red in the site plan (which was annexed as annexure F to the

said writ petition) the names of only Hari Singh and his two uncles Har Chain Singh and Raghubir Singh are shown. Hari Singh took the stand in reply to the application filed by Har Chain Singh (being CM No. 5921/1983) that the said land belonged to Hari Singh and his brothers which included Gulab Singh. This reply was filed on 07.01.1983 well pass the date on which the release deed was executed, i.e., 16.11.1981.

18.2 This apart, the stance of Hari Singh that the land in issue vested in gaon sabha and that only the physical possession of the land was with Hari Singh; was disputed. In this regard reference was made to the order passed by the then Sub-Judge of Delhi dated 17.03.1961; in a suit filed by the family, which included at the relevant point in time Gulab Singh and his brothers; to dispute this position. Reference was also made to the judgment dated 07.06.1963 passed in appeal by Sh. K.S. Sidhu, the then Senior Sub-Judge which, as a matter of fact increased the area of land over which ownership was given to the family comprising of Hari Singh and his four brothers.

EVIDENCE

19. With this preface let me refer to the evidence in the case led by the main parties in the suits before me. In so far as the affidavits of evidence are concerned they replicate more or less the stand taken in the pleadings. I will advert to the examination-in-chief wherever necessary with greater emphasis on what came through in the cross-examination of witnesses.

20. On behalf of LRs of Hari Singh, Satinder Singh (DW6) deposed in defence of the claim set up by Gulab Singh and others. In his deposition DW6 admitted that his grand father late Ramchander left behind land situate in Wazirpur village admeasuring approximately 48 bighas consisting of WP No. 297 to WP No. 456. He specifically referred to the release deed which referred to land admeasuring 1639 sq. yds. To a question as to whether he was aware of the fact that a writ petition was pending at the time of execution of the release deed in the first instance he showed ignorance, and then, went on to say that he had knowledge of the writ petition bearing no. 376/1973. He also accepted thereafter that the said Writ Petition No.376/1973 was pending at the time of execution of the release

deed. He, however, accepted that he was not present with his father at the time of institution of Writ Petition 376/1973. He also displayed lack of knowledge as to when his father became aware of the inaccurate statements having been made in the said writ petition, to which there was a reference made by the said witness in his examination-in-chief. He also displayed lack of knowledge as to whether his father and his uncles (i.e., Gulab Singh, Ramesh Kumar, Rajbir Singh and Mahesh Kumar) had engaged a common counsel. The witness, however, emphasized that with the execution of the lease deed his father had become exclusive owner of the land which was subject matter of the writ petition 376/1973. The witness accepted the fact that there was no specific application in the writ petition alluding to the execution of the release deed. The witness accepted the fact that the application bearing no. 3577/1982 was filed by his father seeking vacation of the order dated 09.03.1981, by virtue of which, an injunction was operating in favour of the writ petitioners. To a specific question as to what was included in the release deed when it referred to an area admeasuring 1639 sq. yds. the witness stated as follows:

"The land referred to in the relinquishment deed (read release deed) measuring 1639 sq. yds. covered one house no. 456 and land measuring 520 sq. yds. and 688 sq. yds. in all 1639sq. yds. It is correct that the oral partition of the house no. 456 took place in the year 1972-73 in between the brothers. The said house was constructed over the land measuring 615 sq. yds. In the oral partition in the suit property was divided into six shares. The six portion which were divided are mentioned as 456/1, 2, 3, 4, 5 and 6 in the names of Mahesh, Ramesh Rajbir, late Sh. Hari Singh, Gulab Singh, Smt. Mam Kaur respectively. It is correct that the aforesaid parties are in their respective portions as owner till today. However, my grand-mother has already died. After the death of my grandmother the share allotted to her was divided by Mahesh, Ramesh, Gulab Singh and Rajbir and we were not allotted any share. My Grandmother died in the year 2004. My grandmother did not sign the relinquishment deed. Out of house NO. 456 only land to the extent of 431 out of 615 sq. yds. was taken into consideration for measuring 1639 sq. yds."

20.1 To a specific question as to whether any proceedings were filed for recovery of possession of property, which was evidently in the possession of his uncles, the witness stated as follows:

"We did not lodge any complaint or filed any suit, for recovery of possession on the basis of relinquishment deed against the plaintiff and the defendants Sh. Ramesh Kumar, Rajbir singh and Mahesh Kumar. However, we had informed the house tax authorities that the aforesaid person namely Gulab Singh was in unauthorized occupation of the land. However, I did not lodge any complaint before the house tax authority against the remaining brothers of my father but my father had asked them to vacate the possession. My father sent a notice demanding the possession of house no. 456/5 on the basis of relinquishment deed, which is Ex. P4. It is correct that Gulab Singh had given reply to the notice vide reply dated 10th September, 1984 which is Ex. DW6/P1. It is correct that before the filing of the suit for partition Sh. Gulab Singh sent notice dated 13.06.1983 asking for partition of the property. The said notice is Ex. DW1/7A/1. It is also correct that my father had replied to the notice dated 27th June, 1983 which had already been Ex. DW1/D7/3-B."

20.2 To another question as to whether by virtue of the judgment passed by Sh. C.D. Vashisht, the then Sub-Judge in suit no. 339/1958 his grandfather, i.e., Ramchander had obtained, as his share, land admeasuring only, 1095 sq. yds.; the witness once again stated that he did not recollect facts in that regard. The witness also accepted the fact that his father had filed a reply dated 07.01.1983 (along with an affidavit and an Annexure-III) in response to an application bearing CM No. 5921/1982 filed by his uncle Har Chain Singh. More precisely, the witness responded as follows:

"It is correct that my father filed a reply Ex. P9, affidavit Ex. P11 and copy of site plan is Ex. P10 in the writ petition in reply to CM No. 5921/82. It is correct that in the reply Ex. P9 and the affidavit Ex. P11 my father admitted the plaintiff Sh. Gulab Singh and Sh. Ramesh Kumar, Rajbir Singh and Mahesh as co-owners alongwith my father in respect of the land in dispute in the said petition."

20.3 I have dealt with the contents of the reply dated 07.01.1983 in the later part of my judgment, I do not propose to discuss it at this juncture.

20.4 Moving further, the witness accepted the fact, after deposing to the contrary, that the release deed referred only to the total area. The witness elaborated by saying that the area mentioned in the release deed added upto 1639 sq. yds. since it covered three (3) parcels of land comprising of two parcels of land admeasuring 688 sq. yds, 520 sq. yds. respectively and a part of another parcel of land measuring 431sq. yds. The witness accepted the fact that the area of that part of the property which fell in 431 sq. yds. stood partitioned and had a super-structure built on it bearing municipal no. 456. To a specific question as to whether property admeasuring 688 sq. yds. and 520 sq. yds. were part of the writ petition 376/1973, the witness stated in the affirmative, and also accepted the fact that the said property fell in khasra no. 533. Furthermore the witness also accepted the fact that the release deed referred to that part of the property, in respect of which a decree dated 14.01.1959 was passed in the case entitled Munshi & Ors. vs Omkar Nath Seth & Ors. The witness also accepted the fact that this was the very same decree which had been referred to by him as "fraudulent decree" in his examination-in-chief recorded by way of an affidavit. The witness affirmed the judgement dated 07.06.1963 was passed, in suit bearing no. 386/1959 whereby, vesting of 14 bighas of land in gaon sabha was declared illegal and/or void. The witness also affirmed that in the appeal the then Senior Sub-Judge Sh K.S. Sidhu had divested the goan sabha of further 5 bighas and 16 biswas of land; with which the vesting of land in goan sabha to the extent of 19 bighas and 16 biswas, was declared void. The witness, however, went on to say, in the proceedings before Mr K.S. Sidhu, the then Senior Sub-Judge his grand father and his sons, i.e., his father and uncles were not a party. The witness adverted to the fact that the Union Of India had filed a revision against the orders of Mr K.S. Sidhu in this court. The witness specifically adverted to the operative part of the said order; which for the sake of convenience is culled out below:

"Appellate decree dated 7th June, 1963, passed by Mr K.S. Sidhu, then Sr. Sub-Judge, Delhi is without jurisdiction, since the civil court had no jurisdiction to entertain the suit in view of decision of the Supreme Court in Hatti vs Sunder

Singh, AIR 1971 SC 2320. The petitioner will, therefore, treat the decree as without jurisdiction, void and ineffective. Under the circumstances, it is not necessary to go into this revision by which the court has held that the application of the petitioner had abated as a whole."

20.5 The witness went on to accept the fact that one Krishan Pratap, Deputy Secretary, Land and Building, Delhi Administration, on behalf of the official respondents, arrayed in CWP 376/1973 had filed an affidavit wherein, he had stated that his uncles, who were party to the suit, were owners of the land in dispute. The witness went on to say that he had no knowledge that Mr B.N. Nayyar, advocate represented his father as well as his uncles in the said writ petition. The witness volunteered that it was his uncle Gulab Singh who was looking after the proceedings in the writ petition; even though, he went on to accept the fact that on the Vakalatnama dated 30.01.1981, executed in favour of Mr B.N. Nayyar, Advocate, the signatures at point X were that of his father, i.e., Hari Singh. DW6 also testified to the effect that property bearing No. WP-479 was situated on land admeasuring 520sq. yds. which formed the subject matter of the relinquishment deed. DW6 also accepted the fact that in the year 1973 the aforesaid property was tenanted to one M/s Bharat Timber Traders. Though the witness denied the fact that his father had issued rent receipts in his capacity as Karta of the Hari Singh & Ors. HUF, he accepted the signatures on exhibit P31 (which is a rent receipt) of his father at point X. DW6 stated that the application bearing no. 3577/1982 was filed by his father, i.e., Hari Singh in his individual capacity and not at the instance of brothers. To a specific question alluding to the fact that in the written statement filed by his father in 1987 suit in paragraph 3(xiii), his father had averred to the contrary, the witness stated that his statement which he had made was correct; though he accepted the fact that in his evidence filed by way of affidavit (examination-in-chief) in his capacity as LR, he had adopted the written statement filed by his father, late Hari Singh, DW6 accepted the fact that his father had opened a bank with Bank of India, Ashok Vihar Branch (in short BOI) in the month of February, 1983 in the name of Hari Singh & Brothers, HUF. The witness, however, voluntarily stated that the said account was opened to clear the income tax liabilities which had arisen on account of demonetization of thousand (1000) rupee currency notes. The witness accepted the fact that the

statement of account filed as Annexure-11 in the 1983 suit was correct. With regard to questions being put to DW6, as regards the entries made in the account maintained with the BOI, the answers were as follows: "Some entries were also made in that account by which loan was given to common friends of the HUF family.

The loans were given by cheques. I can say the particulars of the cheque after seeking the records ."

"The loan was given to M/s Jagdamba Traders and M/s M.L. Khanna

& Co. from the aforesaid bank account on the recommendation of Gulab Singh. However, the loan was granted to Sh. Babu Lal Kataria and Sh. Brij Mohan Tayla by my father Hari Singh.

Q. Who was operating the account at the time of grant of loan?

A. My father Hari Singh was operating bank account on behalf of all brothers at the time of grant of loan.

Q. Who had signed the form at the time of opening of bank account with Bank of India?

A. I cannot recollect as to who had signed the form at that time.

I cannot admit or deny as to my father opened the account as karta of HUF in Bank of India. It is correct that Sh. Brij Mohan Tayla was the advocate of my father Hari Singh and used to file his income tax returns in his individual capacity and in the capacity of the Karta of HUF. Mr. Brij Mohan Tayla returned the aid amount of loan. As far as I remember Mr Brij Mohan Tayla paid the amount by cheque in the name of HUF before the receipt of the notice of partition. As per the statement of account, he said amount was received by the HUF in its bank account on 08.05.1983."

20.6 On the aspect of construction on the plot, which is now the Ashok Vihar property, the witness stated as follows:

"The construction work in plot no. 17 started in the year 1982. It is correct that the M/s Jagdamba Traders and Engineers was dealing in iron business at the time of aforesaid constructions. It is wrong to suggest that iron was used in plot no. 17 and the same was purchased from M/s Jagdamba Traders and Engineers. It is wrong to suggest that M/s M.L. Khanna and Co. was dealing in building materials. It is further wrong to suggest that the payment shown in the statement of account is Ex. PW1/1."

20.7 The witness accepted the fact that on 22.06.1983 the balance in the BOI account stood at Rs 110. DW6 also accepted that the Appellate Assistant Commissioner Income Tax had passed an order dated 16.10.1983 Ex. DW1/41. The witness went on to accept that Sh. Brij Mohan Tayla, was the advocate engaged in those proceedings. DW6 also accepted the fact that payments were made to his uncle as well as his father from the HUF account. This payment, the witness said, were made from the HUF account since at the time when the account was first opened with the bank his uncle as also his father had contributed monies. The witness went on to say that they became aware only on 16.10.1983 that they did not have to bear any income tax liability. The witness also accepted that one Babu Lal, a mason; had been engaged for the construction of the super-structure (evidently on the Ashok Vihar property); and was at that point in time given a friendly loan in the sum of Rs 2000. The witness denied the suggestion that Rs 2000 was paid to the mason towards labour charges. The witness also went on to say that on 11.05.1983 a loan of Rs 10,000 was accorded to the said mason. The witness went on to say that no loan agreement was executed at the time of grant of loan to Jagdamba Traders and Engineers, M/s M.L. Khanna & Co., Sh. Brij Mohan Tayla and Mr Babu Lal as these were friendly and temporary loans. As regards the Ashok Vihar property the witness admitted that the said property was allotted against "settlement of disputes of the area required for construction of Ashok Vihar police station". The witness, however, voluntarily stated that the area belonged to his father Hari Singh; alone. The witness refuted the suggestion that his father Hari Singh had taken possession of the Ashok Vihar property on 19.10.1982 in his capacity as the Karta of the HUF. Once again to a specific question as to whether the land admeasuring 688 sq. yds. and plot no. 479 admeasuring 520 sq. yds. were subject matter of the CWP 376/1973, the witness

accepted the position as being correct. The witness also accepted the fact that the land admeasuring 688 sq. yds. was given up in settlement of dispute to DDA. The witness accepted the fact that CWP 376/1973 was decided by this court in favour of his father and his uncles, though he went on to say that since 1981 his father was the owner of the property as per the release deed. The witness deposed that the accounts maintained by his father in respect of the said property were not traceable. To a specific question put to DW6 as to whether his father Sh. Hari Singh had received any notice from the office of the LAC before CWP 376/1973 was filed; the witness stated that he did not recollect whether any notice has been received by M/s Capital Chemicals or by his father in his capacity as the proprietor. The witness went on to state that the CWP 376/1973 related to land which fell in khasra no. 533/1. The witness also stated that the CWP 376/1973 was filed for quashing the acquisition notification and that it was decided in February, 1995. To a specific question as to whether his late father along with his brothers had filed a writ petition bearing no. 735/1983 for being allotted an alternative plot in lieu of agricultural land acquired by the government, the witness deposed as follows:

"It is correct that my father and his brothers filed writ petition bearing no. 735/1983 for alternative plot in lieu of agricultural land. It is correct that the aforesaid writ petition was allowed on 01.08.2002 by the Honble High Court in favour of all the aforesaid brothers."

20.8 It appears, the witness further deposed voluntarily with respect to the Ashok Vihar property as follows:

"My father and his brothers had applied for alternative plots separately and the application only of my father was allowed by Land & Building Department and all the other applications filed by the brothers of my father were rejected, being time barred. I cannot tell the date of the order by which the Land & Building Department rejected the applications of the brothers of my father. I have not received letter dated 7th Nov. 2003 bearing NO. F.11(106)/1981/LSB(R) Pt./10344/- from Dy. Director (LA) (Residential) DDA. It is wrong to suggest that no such claim was rejected by the department. It is correct that my grandmother sworn an affidavit

dated 19.09.1985. It has been filed by defendant nos. 3 and 4 in civil suit no. 1099/83."

20.9 To a question as to whether his late father had maintained HUF account and also as to whether Brij Mohan Tayla filed the returns of the HUF, the witness stated as follows: "My father did not maintain accounts of Hari Singh & Bros. HUF. I cannot say whether our income tax lawyer Mr. Brij Mohan Tayla filed HUF returns in the name of Hari Singh & Ors. On the basis of accounts or without any accounts. It is correct that Mr Brij Mohan Tayla used to charge his professional charges for conducting the cases on behalf of HUF. I do not recollect whether my father used to maintain the accounts regarding the payment of the fee to Sh. Brij Mohan Tayla, Advocate. I also cannot say whether my father used to pay the professional charges by way of cheque or by way of cash. It is wrong to suggest that my father used to maintain the accounts pertaining to HUF Hari Singh & Bros. in which he has shown the payment of the fees and also the amount which was received by him or paid by him on behalf of HUF for the purpose of construction. The accounts which were in the name of my father as individual are not traceable. It is wrong to suggest that I am not intentionally producing the account books maintained by my father pertaining to the years 1960 onwards upto the date of filing of the suit."

20.10 To a question asked to the witness with regard to loans taken from Vijay Kumar Goel and Mrs Neerja Goel to pay the amount of Rs 3,27,600/- to DDA for allotment of Ashok Vihar property, the witness deposed as follows:

"I know Sh. Vijay Kumar Goel and Mrs Neerja Goel. I met them in the year 1982 when my father took loan by way of draft from them which was in the name of DDA. The drafts were got prepared by Vijay Kumar Goel and Mrs Neerja Goel. Those (four) drafts were got prepared after I and my father visited Mr. Vijay Kumar Goel at Allahabad Bank, Darya Ganj, Delhi. The drafts were got prepared in the name of DDA on account of shortage of time. Mr. Vijay Kumar Goel has already expired. However, I do not know the exact date of his death. Mrs. Neerja Goel, daughter of Sh. Vijay Kumar Goel is alive. I last met Mrs Neerja Goel in the year 1982. At that time, she was not married. She was married in Delhi subsequently. I

cannot say exactly the place of residence of Mrs Neerja Goel. I do not know whether Vijay Kumar Goel has/had any son/sons. It is correct that in the year 1982 Mr. Brij Mohan Tayla, Mr Vijay Kumar Goel and Mrs Neerja Goel were living in Kuchapati Ram, Baazar, Sita Ram Delhi. I do not know whether Mr Vijay Kumar Goel and Mrs Neerja Goel used to file their income tax returns through Mr Brij Mohan Tayla, Advocate. It is correct that Mr Brij Mohan Tayla also stood as a witness on the pronotes executed by my father. The payments to Mrs Neerja and Vijay Kr. Goel were made through cheques which have been reflected in the statement of accounts issued by Union Bank of India which is Ex. DW6/X."

20.11 In so far as the cross-examination of DW6 was conducted by counsel on behalf of Har Chain Singh, the witness accepted that Har Chain Singh, along with his uncles and others owners of land falling in khasra no. 533/1, were parties to the CWP 376/1973. DW6 also accepted that all co-sharers were presented by one common counsel. The witness voluntarily stated that since his father had been told by his brothers Gulab Singh and Har Chain Singh that the CWP 376/1973 was being filed only for quashing of, the notification for acquisition of land, and not for determination of rights; and therefore no steps were taken to correct the site plan appended to the writ petition; marked as Annexure F. DW6 also accepted that annexure Y was filed along with CM No. 3755/1982 filed in CWP 376/1973. The witness accepted that land at point A in annexure F and land at point B in annexure Y was surrendered to DDA by Hari Singh for construction of police station. DW6 went on to volunteer that his late father was in exclusive possession of the surrendered land since 1959, and, therefore, he was allotted the Ashok Vihar property in lieu of the surrendered land. The witness specifically refuted the suggestion that his uncle Har Chain Singh had 1/3rd share in the land surrendered to DDA. DW6, however, accepted the fact that the shares of all owners were clearly demarcated in annexure F and Y being exhibits DW6/P1 and DW6/P2 respectively. To a specific question that the decree passed in the partition suit filed by his grand father, i.e., Ramchander; Har Chain Singh and his other brother Raghunath were shown as joint owners; the witness answered as follows:

"It is incorrect to suggest that in the partition decree my grandfather Ramchander alongwith his two brothers Har Chain Singh and Raghunath were shown as joint

owners. It is incorrect to suggest that the document mark-A (page no. 276 of the writ petition) shows Raghunath, Ramchander and Har Chain Singh as the joint owners."

20.12 To a specific question as to whether his grand father and his grand fathers brother Har Chain Singh and Raghunath had a joint/common khata qua land falling in khasra no. 533, the witness stated as follows:

"It is not in my knowledge whether Sh. Ramchander, Sh. Har Chain Singh and Sh. Raghunath Singh all sons of Sh. Ram Lal had a joint/ common khata qua land in Khasra no. 533 in the revenue records. Volunteered: after coming in force of Delhi Land Reforms Act, 1954 the entire Khasra No. 533 measuring 19 bighas 16 biswas vested under Goan Sabha. It is wrong to suggest that out of the 8 shares, Sh. Ram Lal was entitled to 1 1/2 share in Khasra NO. 533." 20.13 The witness, on being asked to comment on Jamabandi of the year 1950-51, evidently showing that Ram Lal was entitled to 1 1/2 share out of eight shares; the witness stated as follows:

"I cannot comment on the basis of the Jama Bandi produced today before me and it is a matter of record. Copy of Jama Bandi is mark A and its translated version is mark B."

20.14 DW6 was examined by other counsels. There were repetitions; both with regard to the questions and the answers elicited from the witness. Therefore, I wish to highlight only those aspects which would help in determination of issues or emphasise the issues which arise for adjudication.

20.15 In the cross-examination of DW6 by Mahesh Kumar, as regards document Ex. DW1/34, which was evidently filed by Mr Lekh Ram, Pradhan of the Wazirpur village, the witness stated as follows:

"Document Ex. D1/34 were signed by Sh. Lekh Ram in the capacity of Pradhan, Gaon Sabha, Wazirpur. Sh. Lekh Ram remained pradhan, Gaon Sabha, Wazirpur perhaps till 1985. But I do not know since when he was a Pardhan but as a child I always heard his name as Sh. Lekh Ram, Pradhah. Sh. Lekh Ram was pardhan

since 1961 to 1985 but in between two three persons also became Pardhan of Gaon Sabha, Wazirpur. I do not know the name of these two-three persons who became Pardhan of Gaon Sabha, Wazirpur since 1961 to 1985. The Pardhan used to be elected for a period of one year, to my knowledge. I do not know if Sh. Lekh Ram had given panchayat notice to others as it was given to my father regarding property measuring 688 sq. yds. It is wrong to suggest that property no. WP 479, Wazirpur Gaon is the joint property of all the defendants and they received it from their father. (objected to on the ground that question is beyond pleadings)."

20.16 With respect to property no. 456, the witness stated as follows: "The house no. 456 has six different municipal numbers and they are 456 which is also known as 456/6, 456/1, 456/2, 456/3, 456/4 and 456/5. It is correct that Khasra Nos. of these properties is 533. It is correct that property No. WP 479 is situated as on today after the award no. 19A-74/75 in Khasra No. 533/1. It is correct that aforesaid property is in Khasra No. 533/1 since 1974-75 till date."

20.17 In his cross-examination by the counsel for Defendant no. 5 Rajbir Singh, DW6 accepted that his father Hari Singh was an under-graduate man and worked in Haryana Sheet Glass Ltd. The witness showed ignorance as to whether income tax assessment made after 1971-72 of M/s Capital Chemicals Ltd. were placed on record. The witness at first refuted the suggestion that M/s Capital Chemicals was closed in 1972 and was not in operation; however, the witness seemed to correct course by saying that M/s Capital Chemical was closed in 1972, but it continued in existence thereafter. To a specific question with regard to property bearing municipal No. 479, in village Wazirpur and; property admeasuring 688 sq. yds.; the witness stated as follows:

"Property No. 479 village Wazirpur is the exclusive property of my father after the partition of 1981. (Objected to on the ground of beyond pleadings). I have seen document mark A and B I cannot say anything about it. Volunteered: property NO. 479 is in the name of my father even in the House Tax records. Property measuring 688 sq. yds. was of the Goan Sabha but was in the possession of my father. The relinquishment deed was obtained in regard to the aforesaid property

to ensure that if there was any share in the aforesaid property the same was relinquished. It is wrong to suggest that the aforesaid property was a joint family property of HUF Hari Singh and brothers. The aforesaid property measuring 688 sq. yds. was the individual property of my father and as such he has filed the case against Delhi Police."

21. Mr Sagar Singh (DW2), who claimed to be a partner of Novelty Tailor and a tenant, in the shop no. 5, situate on Ashok Vihar property; was examined. The testimony of this witness was tendered in support of the case of the LRs of Hari Singh, to establish that he was the tenant of Hari Singh and had nothing to do with the HUF property. DW2 refuted the suggestion made to him that pagri of Rs 3 lacs was paid when the shop was taken on rent. He went on to say that at present the rent was being paid by Novelty Tailor to the sons of late Chaudhary Hari Singh at the rate of Rs.600 per month. The witness accepted the fact that the firm was maintaining the bank account in Bank of Baroda, Ashok Vihar. The witness said that he could not say since when this firm was maintaining its bank account, without looking at the record. The witness also deposed that he could not say what was the market value of the shop taken on rent; as he was not a property dealer.

22. Mr Subhash Khari (DW3), S/o Sh. Lekh Ram Khari, Pradhan was also examined. He identified the hand writing on exhibit DW1/34 as that of his father. He also testified that in 1961 his father was the pradhan of village Wazirpur and not one Ranjit Singh. The witness, however, in cross-examination accepted the that he was born in 1966 and he had deposed that his father was the pradhan of the village in 1961, as he was told so by his father. The witness, therefore, said that he had no knowledge of the circumstances in which Ex.DW1/34 was executed. The witness also said, as was obvious, that he had no knowledge that his father was a pradhan of the village, as mentioned in Exhibit DW1/34.

23. It appears, examination-in-chief of Gulab Singh (DW1) was carried out orally. In his examination-in-chief Gulab Singh deposed as follows: he stated that his father late Ramchander and his brothers, Har Chain Singh and Raghunath Singh were joint owners of ancestral property, and that in his fathers life time a partition took place between them in respect of those properties. DW1 went on to say that

upon partition, his father received his share property in the property, in Purani Abadi, bearing khasra No. 531, House No. 456 and House No. 479 and piece of land admeasuring 688 sq. yds falling in khasra no. 533. He stated that the total area of Kharsra No. 533 was 1800 sq. yds. He went on to say that his father had got compensation for agricultural land pursuant to award no. 1231 and 1329. The witness further stated that the sum of Rs 80,000 in the denomination note of Rs 1000 each, stood deposited with the Reserve Bank of India. DW1 testified that he along with his brothers had had a partial partition in respect of house no. 456 which, had been divided in equal shares; and that the family of each of his siblings were in occupation of their respective shares. DW1 further stated that the LAC had issued an acquisition notice in respect of property bearing no. 479 and the land admeasuring 688 sq. yds. The said notification under Section 4 of LA Act, was in respect of land bearing khasra no. 533/1. He further testified that a writ petition no. 376/1973 was filed wherein, an injunction order against dispossession by the official respondents was obtained from the court. The witness further stated that in 1981, DDA had attempted to dispossess them from land admeasuring 688 sq. yds forming part of khasra no. 533/1. He further testified that DDA allotted the Ashok Vihar property in lieu of land admeasuring 688 sq. yds. by virtue of a statement made in the contempt proceedings. The witness deposed that the letter of allotment qua Ashok Vihar property was received by his brother Hari Singh in his capacity as the Karta of the HUF. On the aspect of construction made on the Ashok Vihar property, the witness stated that it had been carried out by participation of all five brothers. The money used for construction was sourced from rents and advance receipts from prospective tenants. The witness testified that apart from this, money was also spent out of HUF funds; the accounts with respect to which was available with his brother Hari Singh. The witness further stated that after constructions of the shops have been completed, he had sought a partition and in this respect issued a notice dated 13.06.1983 (Ex. DW1/D-7/1) (in S. NO. 1099/1983). The witness also relied upon the acknowledgment due card (Ex. DW1/D-7/2) and postal receipts (Ex. DW1/D-7/2A). The witness also referred to the reply dated 27.06.1983 (Ex. DW1/D-7/2B) received in response to his notice. The witness went on to say that a request was made to the DDA for having the plot shown in the joint name of the brothers, which included himself, Hari

Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar. Since the DDA did not take any action, a legal notice dated 09.02.1987 (Ex. DW1/D-7/3-4) was issued. The witness identified the signatures of his advocate Sh. Hari Kishan Sharma on the said exhibit. The witness also relied upon the postal receipts (Ex. DW1/D-7/3 to D-7), acknowledgement due card (Ex. DW1/D-7/8 to 14). Since no reply was received from DDA; a suit was filed. The witness went on to depose that after the filing of the said suit, the DDA executed a lease deed solely in the name of his brother Hari Singh. The witness testified that apart from the properties mentioned above, the HUF also owned a property situate in Jebabad, Post Barnawa, Jilla Meerut, U.P and a sum of Rs 110 lying in BOI. The witness also alluded to the effect that a writ petition had been filed for allotment of an alternative plot in respect of properties acquired by DDA being CWP No. 735/1983. 23.1 At this juncture, I may only refer to the fact that Gulab Singh was examined by counsels for other defendants. The significant part of his deposition qua the HUF and the land which was evidently acquired by the DDA was as follows:

"The name of the HUF of which I was a member is Hari Singh & Bros. All five brothers were the members of this HUF. The Bank account of the HUF was operated by Hari Singh as the Karta of the HUF. It is correct that land bearing khasra no. 533, 533/1 and 533/1 are separate lands. All five brothers had signed the writ petition bearing no. 376/73. It is correct that in January-February 1981 the DDA had taken possession of the 688 sq. yds. on which the police station was to be constructed. At that time all five brothers were in possession of this land It is correct that initially the DDA had offered a plot NO. 19 or 20 Ashok Vihar Community Centre and Hari Singh had, on behalf of the all of us, sent his acceptance. It is also correct that the DDA had said that since we were the HUF one person should represented all of us. Eventually, after filing of the contempt petition the DDA offered to allot plot no. 17 and that we should agree to the vacation of the stay order dated 09.05.1973. We, accordingly had the stay order vacated, and the plot no. 17 was allotted."

23.2 That brings me to the cross-examination of Gulab Singh by the counsel for the LRs of Hari Singh. First and foremost Gulab Singh accepted in his cross-examination that the partition was effected in his fathers life time with his brother,

in respect of property jointly owned by them. Gulab Singh, however, refuted the suggestion consistent with his testimony, given in the examination-in-chief, that an HUF was not formed between Gulab Singh and his siblings after the death of their father. He also refuted the suggestion that HUF was formed only after the issue of demonetization of thousand (1000) rupees currency note had cropped up. On the issue as to the area of the land which fell to the share of their father, the witness testified as follows:

"It is incorrect to suggest that out of Khasra no. 533, only 12 biswas fall to the share of my father. It is correct that 16 biswas out of khasra no. 533 has also been declared to Ramji Lal who was also been declared Bhumidar along with others in respect of 12 biswas. It is also correct that similarly 1 bigha 5 biswas had to be in the Bhumidari of Shri Mam Raj. (volunteered) the Delhi Land Reforms Act has no application to the land in question. It is incorrect to suggest that out of Khasra No. 533 out of which land measuring 19 bighas 16 biswas was vested with the Goan Sabha."

23.3 To a specific question as to whether M/s Capital Chemical occupied land admeasuring 688 sq. yds. and whether Hari Singh was the sole proprietor; the witness stated as follows:

"It is incorrect that out of this land 688 sq. yds. was occupied by M/s Capital Chemicals factory. It is incorrect to suggest that Hari Singh was the sole proprietor of Capital Chemicals factory (volunteered) he was there in his capacity of a Karta of HUF. It is incorrect to suggest that on 08.09.1983 Sales Tax No. 31819 was in the name of Hari Singh sole proprietor of Capital Chemicals factory. It is correct that a Municipal Licence bearing No. 26057 was issued to Hari Singh on 02.05.1970."

23.4 On the forceful occupation of the land by DDA the witness stated as follows:
"In fact, our land was forcibly taken away in January, 1981. The compensation which was paid to minor brothers was deposited in the post office, Sabzi Mandi. I do not have any document to show that Hari Singh had withdrawn the compensation deposited in favour of the minors."

23.5 With respect to whether land admeasuring 688 sq. yds. vested in gaon sabha and the status of the notice (Ex. DW1/34) evidently issued by Sh. Lekh Ram, Pradhan, the witness stated as follows:

"It is incorrect to suggest that the property admeasuring 688 sq. yds. had vested in the Gaon Sabha. It is also incorrect to suggest that the land had vested for the Gaon Sabha and Hari Singh had taken over its possession. It is incorrect to suggest that Shri Lekh Ram was a pradhan of our village; there is no pradhan.

It is incorrect to suggest that under Section 86A of the Delhi Land Reforms Act, Shri Hari Singh had received a notice from the Pradhan. I have no knowledge of Ext. D1/34 dated 12th June, 1961."

23.6 The witness asserted that the factory shed of M/s Capital Chemicals as well as the boundary wall was not constructed by Hari Singh, as was suggested in the cross-examination. It was asserted by the witness that M/s Capital Chemicals was a joint enterprise of the family. In this connection, witness relied upon the CWP No. 376/1973. In an answer to the question, as to whether he had filed an affidavit dated 05.01.1982 (Ex. DW1/D6/15); the witness while accepting the fact that he had filed the affidavit, went on to say that he had done so at the say so of Hari Singh. On the issue of Ashok Vihar property being allotted in lieu of land taken by DDA for construction of the police station, and the monies spent on subsequent construction made thereon; the witness testified as follows: "It is correct to suggest that 17 Community Centre, Ashok Vihar, was allotted to Hari Singh in lieu of the land on which the Police Station was constructed. It is correct that 17 Community Centre was allotted to Hari Singh by the DDA by letter Ext. D-2 dated 30th July, 1982. It is correct that Hari Singh took possession of this property on 19.10.1982; but he took this as Karta of HUF. It is correct that this letter Ext. D-2 does not state that Hari Singh took the property as the Karta. It is incorrect to suggest that Hari Singh paid a sum of Rs 3,27,600/- to the DDA. It is, however, correct that the price of this property was Rs. 3,27,600/-. Consequent upon a compromise, Shri Vijay Kumar Goel and his daughter has deposited this amount in the DDA on behalf of all five brothers. It is incorrect to suggest that this money was deposited only because Hari Singh has (sic had) taken a loan from Mr Goel. Some pronotes were

no doubt executed by Hari Singh but these were done after the institution of the suit. It is correct that Hari Singh had performed Bhumi Pujan on the plot on 27.10.1982; it was on behalf of all five brothers. It is incorrect to suggest that Hari Singh had carried out construction on his own; it was done on behalf of all five brothers. It is wrong to suggest that suit property no. 17, Community Centre, Ashok Vihar, Delhi was constructed by Mr Hari Singh from his own funds. (volunteered) It was constructed by all the five brothers out of the funds of HUF. It is wrong to suggest that Mr Hari Singh had taken some money on loan for construction of the suit property. It is wrong to suggest that the property bearing no. 17, Community Centre, Ashok Vihar is the exclusive property of Mr Hari Singh"

23.7 To a suggestion that the property left behind by the father was partitioned amongst 5 brothers in September, 1981; the witness replied in negative. The witness also refuted the suggestion that it was pursuant to this partition that the land at "Rithala" came to his share. The witness volunteered that he had purchased the plot at Rithala, out of his own funds and not from the funds of HUF. The witness also refuted the suggestion that the property at Jaibabad came to the joint shares of his brothers Rajbir Singh, Ramesh Kumar and Mahesh Kumar. The witness went on to depose that the said property was purchased out of the HUF funds and stood in the name of HUF. The witness stated that he had no knowledge that property at Jaibabad had been sold by Ramesh Kumar and Mahesh Kumar during the pendency of the suit. The witness also denied that the House bearing no. 479, in Wazirpur village, came to the share of Hari Singh by virtue of the said partition. On the aspect of the area falling within khasra no. 533 and the properties built thereon the witness deposed as follows:

"It is correct that as per revenue record, the area of Khasra NO. 533 is 23 bighas 10 biswas. It is correct that house no. 480, Wazirpur village is in the possession of Shri Harchain Singh. It is correct that house bearing nos. 479, 480 and 481, Shiv market, Wazirpur village are constructed on the land khasra no. 533. (volunteered) However this khasra no. 533 has been numbered as 533/1. It is correct that area of the aforesaid three houses is 156x90 sq. ft. I have no knowledge that my real uncle Shri Harchain Singh took his 1/3rd share being house no. 288 from his father at the time of partition on which house no. 455 and 456 was constructed. It

is wrong to suggest that the area on which house no. 455 and 456 was constructed comprises of 12 biswas which was part of khasra no. 533. However the area was little larger which was part of khasra no. 533. It is correct that the khasra no. 533/1 is a part of khasra no. 533. It is correct that the total area of the khasra no. 533/1 is 13 bighas 2 biswas. It is correct that the khasra no. 533/1 measuring 13 bighas 2 biswas was acquired and award was published on 31st December, 1974. It is wrong to suggest that we all five brothers along with Shri Harchain Singh and Raghunath Singh had claimed compensation for the land measuring 156x90 sq. ft. It is correct that we have not made any compensation application against land measuring 688 sq. yds. (volunteered) I have filed writ petition against the acquisition of land. I do not know that the Gaon Sabha has filed claim in lieu of the land measuring 688 sq. yds.

23.8 DW1 accepted the signatures on the release deed.

SUBMISSIONS :-

24. Arguments were addressed on behalf of the parties arrayed in the captioned suits, either by their respective counsels or in person. Gulab Singh was represented by Mr H.K. Sharma, Advocate; Ramesh Kumar was represented by Mr R.P. Aggarwal and Ms Sandhya; Rajbir Singh was represented by Mr Ashok Kumar Sharma, Advocate; Mahesh Kumar argued in person. On behalf of LRs of Hari Singh submissions were made by Mr Sandeep Sethi, Sr. Advocate assisted by Mr S.N. Gupta. In addition, arguments on behalf of Har Chain Singh were addressed by Mr J.K. Jain. On behalf of DDA, no oral submissions were advanced.

25. I must note here that the arguments advanced by the counsel for Gulab Singh and those made on behalf of Rajbir Singh and Ramesh Kumar were more or less similar as they supported the case set up by Gulab Singh. Mahesh Kumar, who appeared in person also supported, the stand of Gulab Singh. There was, however, an attempt made by the counsels for Rajbir Singh, Ramesh Kumar and Mahesh Kumar in person to explain the change in stand attributed to them in the latter suits as compared to the 1983 suit. I will deal with this aspect when I come to their submissions. For the moment, let me refer to the submissions made on

behalf of Gulab Singh, as supported by the three brothers, referred to above.

26. Mr H.K. Sharma, who appeared for Gulab Singh, apart from articulating the stand taken in the pleadings, submitted that a HUF comprising of Hari Singh and Brothers was formed immediately on the death of father Ramchander. He submitted that properties, which were inherited, were referred to in paragraph 2 of the plaint. He further submitted that the properties with respect to which partition was sought were those referred to in paragraph 2(b), (c) and paragraph 5 of the plaint. Mr Sharma vehemently argued that the contention of the only contesting defendant, i.e., LRs of Hari Singh that the properties of the family stood partitioned prior to September, 1981, is not borne from record. It was submitted that if it was so, the onus in that regard should be squarely on Hari Singh. It was Mr Sharmas contention that the land which fell in khasra no. 533 and which came to the share of their father was also jointly owned by the brothers. It was further submitted that on the portion of the land which fell to the share of the brothers, immovable properties built thereon thereon being: property no. 479 and 456. The brothers, it was submitted, had in fact built immovable properties, i.e., houses which were numbered sequentially as 456/1 to 456/5. Mr Sharma submitted that in so far as the land measuring 688 sq. yds., which fell in the same khasra (i.e., khasra no. 533) as property no. 479, was subject matters of an acquisition notification dated 13.11.1959; apart from land of other co-sharers outside the family, and hence, the brothers joined other petitioners being 25 in number, in instituting a writ petition in this court being: CWP No. 376/1973. Mr Sharma submitted that khasra no. 533/1 is nothing but the original khasra no. 533. He further submitted that the said writ petition was disposed of by an order of this court dated 03.02.1995, whereby, the acquisition notification was quashed save and except in respect of land admeasuring 688 sq. yds. He submitted that the land admeasuring 688 sq. yds. was possessed by DDA and that in lieu thereof it was the HUF which was to be allotted the Ashok Vihar property. It was Mr Sharmas contention that, Hari Singh surreptitiously got the Ashok Vihar property allotted in his name; even though all along in so far as the official respondents were concerned, i.e., the DDA, the settlement, if any, could have been arrived at, only by including the remaining siblings of Hari Singh, namely, Gulab Singh, Ramesh Kumar and Mahesh Kumar. The fact that all the brothers were joint owners of the land measuring 688 sq. yds.

was sought to be established by referring to the following: (i) contents of CWP No.376/1973, which was filed in the name of several persons including Hari Singh and his four brothers; (ii) the fact that CM No. 332/1981 in CWP No.376/1993 whereby, injunction was sought for violation of the stay order granted by this court on 09.05.1973; was signed by all five brothers including their two uncles and 23 other petitioners; (iii) the fact that CM No. 656/1981 in CWP No. 376/1973 (to seek punishment of the official respondents who had encroached upon the land, which was subject matter of the said writ petition despite, orders of the court dated 09.05.1973), bore signatures of all five brothers, including Hari Singh; (iv) the reply dated 07.01.1983 filed by Hari Singh to the CM No. 5921/1982 in CWP no. 376/1973 which contained the averment that all five brothers were "owners in possession" of the land in issue; and, (v) lastly, reliance was also placed on the affidavit-in-reply dated 18.01.1974 of Sh. Krishan Pratap, the then Deputy Secretary, Land & Building, Delhi Government wherein, there is a clear reference to the fact that the brothers along with their uncles fell in the category of "persons who were owners in possession of the land in issue".

26.1. It was further submitted that the stand of Hari Singh that a release deed was executed in his favour itself shows that there were in existence properties which required division. Mr Sharma submitted that the release deed was not a document which could sustain legal scrutiny and hence, pass the test of legal validity in the eyes of law for the following reasons. Firstly, it did not record the particulars of properties, with specificity, in respect of which the executants (i.e., four brothers of Hari Singh) evidently relinquished their interest in favour of Hari Singh. Secondly, the release deed refers only to relinquishment of interest in land admeasuring 1639 sq. yds whereas, the area which fell to the share of their father was 1095 sq. yds. Thirdly, no consideration passed from Hari Singh to his four siblings for release of the land and hence, the document was void. It was further submitted by Mr Sharma that the document was not executed for the purposes claimed by Hari Singh and hence, the properties continued to be joint. Mr. Sharma also refuted the stand of Hari Singh that the HUF could have had no interest in the land which fell to the share of their father since the said land vested in gaon sabha. For this purpose Mr Sharma relied upon the judgment dated 17.03.1961 passed in suit no. 386/1959 entitled Munshi & Ors. vs Gaon Sabha & Ors., and thereafter, on the

judgment of Sh. K.S. Sidhu, the then Sr. Sub-Judge dated 07.06.1963 passed in RCA no. 375/1962 to demonstrate that the land had been retrieved from gaon sabha. Mr Sharma submitted that the disposal of the civil revision bearing no. 154/1969 preferred in this court by the Union of India, did not in any manner impact the vesting of land in the family. Mr Sharma also alluded to the decree passed by Mr C.D. Vashisht, the then Sub-Judge dated 14.01.1959 in suit no. 339/1958 whereby, various properties including those falling in khasra no. 533 were partitioned. It was the submission of Mr Sharma that even though Hari Singh had taken the stand in the captioned suits that the decrees re-vesting the land in favour of the family were void as the land vested in the gaon Sabha had incongruously sought to take advantage of the same by seeking the relinquishment of these very properties by relying upon the release deed. Mr Sharma submits that this argument cannot be countenanced because on the one hand Hari Singh contended that their occupation of the land was illegal and on the other hand, has sought to seek benefit of the illegal occupation by getting the Ashok Vihar property allotted in his favour in lieu of what he claims was his possessory title. In this connection, he once again relied upon the affidavit of Mr. Krishan Pratap, Deputy Secretary, Land & Building, Delhi Government, which, according to him, refers to the fact that the brothers along with their uncles were "owners in possession". Support was also sought to be drawn from the notice sent by LAC to Gulab Singh dated 02.02.1966 and 04.07.1966 (annexures C and D to the CWP No. 376/1973) in relation to acquisition of khasra no. 533/1 to show that gaon sabha was never considered as owner and occupant of the said land. Mr Sharma, in this regard, emphasized that in so far as the land admeasuring 688 sq. yds. was concerned it was in possession of all five brothers. He submitted that the business of M/s. Capital Chemicals was carried on by all five brothers and that the said business was closed in 1972. It was submitted that the stand taken by Hari Singh to the contrary; that he was in sole occupation of land admeasuring 688 sq. yds. and, the sole proprietor of M/s. Capital Chemicals; was incorrect. Mr. Sharma contended that as a matter of fact the super structure on the Ashok Vihar property was built from the funds of the HUF. It was Mr. Sharmas contention that the documents, which had been filed by Hari Singh in support of his case had not been proved. As regards the award passed vis-a-vis acquisition proceedings, it

was submitted by Mr Sharma that the said award was not accepted and it was challenged in the court of Sh. Jagdish Chandra, the then Addl. District Judge in LAC No. 161/1976 - and a stay was granted on the operation of the award vide order dated 06.10.1976 (Ex. P/28 in 1983 suit). Reliance in this regard was also placed on the report of the said Addl. District Judge being exhibit: P/29 filed in the 1983 suit. Mr Sharma further said that in so far as the compensation of claim being restricted to an area of only 156x90 ft. was concerned (Ex. D1/69) the said claim form did not bear signatures of Gulab Singh, while the other brothers, at the relevant point in time, were minors. Mr. Sharma, however, conceded that Hari Singh had filed a claim albeit in his capacity as a Karta. 26.2 As regards Hari Singhs stand that the suit was not maintainable in view of provisions clause (i) of sub-section (2) of Section 53B of the Delhi Development Authority Act, 1957 (hereinafter referred to as DDA Act) Mr Sharma submitted that a purposive interpretation ought to be given to the said provision in as much as the DDA should have notice of the issues at hand. It was thus submitted that DDA being a party to the CWP 376/1973 and, in fact a party to the settlement arrived in those proceedings, which resulted in the Ashok Vihar property being leased - the provisions of sub-Section (1) of Section 53B, could not be used to non-suit Gulab Singh. As regards sub-section (2) of Section 53B, it was Mr Sharmas contention that the 1987 suit fell within exempted category, that is, in other words was a declaratory suit and hence, the limitation of six months, as prescribed in sub-Section (2), did not apply to it. In support of the aforesaid submissions, reliance was placed on the judgment of the Supreme Court in the case of: State Bank of Patiala vs Gita Iron & Brass Works Ltd. AIR 1978 SC 1608; Ghanshyam Das vs Dominion of India AIR 1984 SC 1004 and Karamveer Singh vs DDA 148 (2008) DLT 498. In the alternate, on the issue, as to when limitation would commence vis-a-vis the 1987 suit, Mr. Sharma contended that limitation would begin only upon execution of lease deed i.e., dated 26.09.1984 and not from the date of the purported letter of allotment i.e., 30.07.1982. Mr Sharma said that since the letter dated 30.07.1982 of DDA, was only an offer conditioned on compliance of terms contained therein, the cause of action would arise only on the execution of the lease deed. Adding another string to its bow, on the issue, of limitation, it was contended that a representation dated 09.02.1987 had been made to DDA which

though received by it; had elicited no reply from the DDA. Therefore, on these basis, it was contended by Mr. Sharma that the 1987 suit, which was moved in July, 1987, was within limitation. 26.3 As regards 1988 suit, it was submitted by Mr Sharma that there was no evidence on record to show that Har Chain Singh was a 1/3rd owner of the land admeasuring 688 sq. yds. Mr Sharma submitted that Har Chain Singh only sought to take advantage of an error which had crept in, in the site plan. It was Mr Sharmas contention that on this very basis, Har Chain Singh had sought impleadment in 1983 suit, which was rejected by this court; an order which was sustained right till the Supreme Court. Mr. Sharma further contended that Har Chain Singh had failed to get the record rectified, even by the Tehsildar. Mr Sharma submitted that in any case, the suit filed by Har Chain Singh is beyond limitation, as the cause of action admittedly had arisen in favour of Har Chain Singh, in 1982.

27. Counsels for Ramesh Kumar and Rajbir Singh, and Mahesh Kumar appearing in person supported the submissions of Mr H.K. Sharma made on behalf of Gulab Singh. In addition reference was made to not only the pleadings as well as the testimony on record of Satyender Singh (DW6) but also to the reply dated 27.06.1983 (Ex. DW1/D-7/3B) issued by Hari Singh to notice dated 13.06.1983 issued for partition and rendition of accounts by Gulab Singh to show that the HUF was in existence. It was also stressed that on his own showing (DW6) had accepted that the HUF account maintained with BOI titled Hari Singh & Bros. was closed on 06.01.1984; contrary to the stand taken by Hari Singh that HUF came to an end prior to September, 1981. A stress was also laid on the fact that pursuant to the resolution of CWP No. 753/1983, the brothers along with LRs of late Hari Singh have taken possession of land in Rohini on 11.01.2010 in lieu of agricultural properties acquired by the Government. It was submitted that the source of income of the HUF was agricultural income and rental income obtained from properties bearing municipal nos. 456 and 479 and, compensation / awards received on acquisition of agricultural properties. In particular, Mr R.P. Aggarwal, who appeared for Ramesh Kumar sought decree of partition of property bearing no. 479, Wazirpur, Delhi, Jaibabad; Plot No. A-55, Pkt 1, Sector 32, Rohini and the Ashok Vihar property.

28. I may only note that the variance in the written statement of Ramesh Kumar was sought to be explained by alluding to the fact that the written statement filed in the 1983 suit was a common written statement, which was signed by Mahesh Kumar for himself and on his behalf brother Ramesh Kumar as his attorney. Reference was drawn to the affidavit of Mahesh Kumar to support the fact that the written statement was signed under the influence of their elder brother Hari Singh. In this connection, it was stressed that the circumstances, in which written statement was signed is set out in the testimony of Mahesh Kumar, who claimed that since a common advocate was engaged the written statement was drafted on the instructions of their brother Hari Singh. As a matter of fact the words " through attorney Mahesh Kumar" at point A, appearing in the written statement, filed in the 1983 suit, on behalf of Ramesh Kumar had been written by Hari Singh, and for this purpose reliance was placed on the testimony of Mahesh Kumar. It was submitted that the joint written statement filed on behalf of Mahesh Kumar, Ramesh Kumar and Rajbir Singh was thus under the influence of Hari Singh. The averments made in the joint written statement filed on behalf of these three brothers were compared with that of the written statement filed on behalf of Hari Singh to show the commonality of both language and the stand taken; and therefore, his overarching influence on them. It was thus submitted that the averments made in the joint written statement, filed on behalf of three brothers, Ramesh Kumar, Mahesh Kumar and Rajbir Singh, in the 1983 suit were prepared at the instance of Hari Singh and, contained many incorrect averments, which were contrary to the evidence, save and except to the extent that, it referred to the then pending CWP 376/1973. In this connection, they sought to place reliance on the defence taken by them in the written statement filed in the 1987 suit and the 1988 suit.

29. On the other hand, on behalf of LRs of Hari Singh it was submitted that the 1983 suit ought to be dismissed as the plaintiff, Gulab Singh, had failed to disclose the existence of the release deed. Reliance in this regard was placed on the judgment of the Supreme Court in S.P. Chengalvaraya Naidu vs Jagannath & Ors. AIR 1994 SC 853.

29.1 Mr Sethi further submitted that there was neither any pleading nor any prayer seeking cancellation of the release deed and hence, no evidence contrary to the

pleadings was admissible. Reliance in this regard was placed on the following judgments: Subodh Kumar Gupta vs Shrikant Gupta & Ors.: (1993) 4 SCC 1; Md. Noorul Hoda vs Bibi Raifunnisa & Ors.: JT 1995 (9) SC 256; Anand Prasad Agarwalla vs Tarkeshwar Prasad & Ors. AIR 2001 SC 2367; Abdul Rahim & Ors. vs SK. Abdul Zabbar & Ors.: AIR 2010 SC 211; and Jaideep Bajaj vs Smt Shashi Bajaj: AIR 2006 Delhi 335.

29.2 It was also submitted by Mr Sethi that the plaintiffs ought to have challenged the allotment of the Ashok Vihar property made in favour of Hari Singh. Mr Sethi stressed that rights in the land vested in Hari Singh on allotment and that execution of the lease deed thereafter on 26.09.1984 was a mere ministerial act; therefore, the cause of action, if any, arose on the date of allotment (i.e., 30.07.1982). These being the circumstances, Mr. Sethi submitted that the challenge to the lease deed without challenging the allotment was ineffective and hence, the prayer for partition of the Ashok Vihar property was liable to be rejected. Reference in this regard was made to Rules 19 and 42 of the DDA (Disposal of Developed Nazul Land) Rules, 1981 and the judgment of this court in Manmohan Kishan Malik vs Mr Avtar Kishan Malik (deceased) through LRs & Ors. in CS(OS) No. 426/2008 dated 13.10.2009 and Mohan Brothers Cooperative House Building Society Ltd vs DDA & Ors. 114 (2004) DLT 282.

29.3 It was also submitted that the 1987 suit was barred in view of the fact that it was beyond limitation prescribed in sub-Section 2 of Section 53 B of the DDA Act. Since the cause of action, according to Mr Sethi, as indicated above had arisen on the date of allotment (i.e., 30.07.1982), the suit was barred as it was neither a suit for recovery of immovable property or for declaration of title; the two exceptions provided in sub-section 2 of Section 53B of the DDA Act. In any event it was submitted, even if it is assumed that cause of action arose on 26.09.1984, the 1987 suit should have been filed within six months of the said date.

29.4 In so far as 1988 suit was concerned, it was submitted that the suit was clearly barred under the provisions of Section 53B of the DDA Act. In any event in so far as the 1988 suit was concerned it was well beyond limitation of three years, assuming without admitting that the cause of action arose on execution of the

lease deed, i.e., 26.09.1984. Mr Sethi further submitted that the benefit of Section 14 of the Limitation Act, 1963 (in short, "the Limitation Act") was not available to Har Chain Singh since he was pursuing a remedy before Tehsildar in which reliefs sought were not those which are claimed in the 1988 suit. The proceeding before the Tehsildar was for correction of the mutation entry and not for setting aside the lease deed or for allotment or even partition. Therefore, according to Mr Sethi, prayers made in the suit could not have been granted by Tehsildar. In this regard, my attention was also drawn to the fact that no application had been filed on behalf of Har Chain Singh under Section 14 of the Limitation Act for exclusion of the time spent before the Tehsildar. It was further submitted that the application of Har Chain Singh filed with the Tehsildar culminated with the order of the Financial Commissioner dated 20.03.1989 (Ex. PW1/X-1) whereby, the matter was remanded to the Tehsildar for further consideration. Consequently, Section 14 of the Limitation Act would have no obligation since it was not dismissed on the ground of lack of jurisdiction. It was the contention of the learned counsel that the provisions of Section 14 of the Limitation Act for exclusion of the time would have application only if proceedings before the Tehsildar related to a matter which was subject matter of the 1988 suit; the proceedings were carried out before the Tehsildar in good faith; and lastly, the application made to the Tehsildar was rejected for defect of jurisdiction. Reliance in this was placed on the judgement of Jai Prakash & Ors. vs Satnarain Singh & Ors. 1994 Supp. (1) SCC 153 and Anil Pratap Singh Chauhan vs Onida Savak Ltd. AIR 2003 Delhi 252.

29.5 On merits, Mr Sethi submitted that Har Chain Singh had not established any title to the land against which Ashok Vihar property was allotted. Har chain Singh, according to him, only sought to take advantage of the mistake in the plans filed with the CWP 376/1973.

30. In so far as the submissions made on behalf of Ramesh Kumar, Rajbir Singh and Mahesh Kumar were concerned Mr Sethi vehemently argued that the said persons had sought to amend their written statement; an attempt which was rejected out-rightly by this court vide its order dated 04.04.1995. It was pointed out that an appeal against the said order preferred by Ramesh Kumar was also rejected by Division Bench vide order dated 30.04.1996. Rajbir Singh, who had

preferred an independent appeal, received the same treatment by a separate order of the Division Bench order dated 13.08.2002; while Mahesh Kumar did not appeal against the order refusing amendment. Undeterred, Mahesh Kumar, Rajbir Singh and Ramesh Kumar filed affidavits of evidence contrary to their stand in the written statement filed in 1983 suit. This court deprecated the said action by observing in its order dated 07.10.2005 (passed in 1988 suit) that evidence could be led by the parties which was in line with the stand taken in the written statement, and if, evidence was beyond the pleadings the same would be taken off the record. This observation, according to Mr Sethi, also finds a reflection in the order dated 16.09.2009 wherein, in connection with the affidavit of evidence of Ramesh Kumar, the court observed that to the extent the evidence travelled beyond the written statement filed in the 1983 suit, such evidence would not be taken into consideration at all. It was submitted that observations in this regard were also made qua Mahesh Kumar and other defendants in the suit. Mr Sethi also referred to order dated 03.11.2009 (passed in 1988 suit) whereby this court evidently rejected the attempts of Mahesh Kumar to bring on record the evidence which was contrary to the written statement. Reference was also made to the order dated 21.05.2010 (passed in 1983 suit) whereby, this court once again rejected the attempt of the brothers to summon the very same documents the request with respect to which had been rejected by an earlier order of the court dated 03.11.2009. Mr Sethi thus submitted that Ramesh Kumar, Rajbir Singh and Mahesh Kumar were bound by their joint written statement filed in the 1983 suit. No evidence was admissible or could be looked at by the court which is contrary to the written statement filed in the said suit. According to him, the said persons had taken a position in the 1987 and 1988 suits contrary to what is stated by them in their written statements filed in the 1983 suit, and hence, the change in stand is liable to be ignored. It was specifically submitted, that in so far as the defence taken by Ramesh Kumar that the fact that he had not consented to the averments made in the joint written statement was borne out by the endorsement "through attorney" on the written statement being in the hand writing of Hari Singh - was a stand, which did not find a mention in the pleadings. As a matter of fact, according to Mr. Sethi, there was no such assertion by Ramesh Kumar even in his examination-in-chief.

31. On the issue of the release deed the following submissions were made: (i) release deed was a registered document and hence, there was presumption as regards its validity. The person who challenges a registered document has a very heavy onus placed on him which, can only be discharged by cogent and convincing evidence. In this case, no such evidence has been placed on record. In the complaints, i.e., 1983 and 1987 suit, there is no mention of the release deed. The plea with regard to the release deed was only raised in the replication filed in the 1983 suit. In the examination-in-chief of Gulab Singh, it was submitted that there is no reference to the release deed, therefore, none of the pleas raised in the replication had been proved by the plaintiff. There being no foundation in the plaint or even in the examination-in-chief of Gulab Singh, with regard to the release deed, it was not open to the plaintiff to pick on statements made in the cross-examination of a colluding defendant Ramesh Kumar, Rajbir Singh and Mahesh Kumar. In the alternate, it was submitted that the contention that the release deed was not acted upon, which is why, there was no reference to it either in CWP 376/1973 or in the reply to the notice dated 27.06.1983 (Ex. D-7) could not be examined by the court. It was contended there being no pleading to that effect in the plaint, as also with respect to other averments impugning the release deed, that is, lack of consensus-ad-idem or proper description of the land these submission would not be countenanced by the court. In this regard, Mr Sethi submitted that the contentions made pertain to facts which do not emerge from pleadings and hence, no cognizance can be taken of these assertions as, Hari Singh had no chance to controvert these allegations by filing a written statement and leading evidence in that regard. Entertaining such pleas would be contrary to the provisions of CPC and violative of natural justice. The fact that in the applications filed there was no reference to the release deed, was answered by Mr Sethi by submitting that the writ petition, pertained to the acquisition notification and, therefore, there was no necessity to refer to release deed at all. In so far as why Hari Singhs reply dated 27.06.1983 did not refer to the release deed, Mr Sethis answer is more or less the same, that is, what was impugned in the legal notice was allotment of land to Hari Singh in his individual capacity as against the position which Gulab Singh held, which was, it ought to have been in joint names of all brothers. Therefore, it was contended that there was no need to refer to the

release deed. On the issue of the release deed lacking consideration, Mr Sethi stated that a bare perusal of the document would show that Gulab Singh and the other brothers had relinquished their interest in the properties in favour of Hari Singh in recognition of the fact that not only had he been incurring expenses on litigation with the DDA, but was also carrying his sole proprietorship business in the name and style M/s. Capital Chemicals since long from the property in lieu of which Ashok Vihar Property was allotted. It was submitted by Mr Sethi that therefore, the argument of lack of consideration did not have substance. As regards the fact that the land, i.e., 688 sq. yds. against which Ashok Vihar property was allotted was covered by the release deed was sought to be established by referring to the last two recitals of the said release deed. In this regard reference was also made to Gulab Singhs notice dated 11.07.1983 to DDA, wherein there was reference to the release deed. Lastly, it was contended that the release deed was clear and unambiguous whereby, rights and interest in the land had been given up in favour of late Hari Singh. The document being duly registered, the subsequent actions of Hari Singh in prosecuting CWP 376/1973 would be of no consequence. Reliance in this regard was placed on the following judgments: Alluri Venmkatapathi Raju & Anr. vs Dantuluri Venkatanarasimha Raju: 1936 PC 264. As regards the reply filed to CM No. 5921/1982 by Hari Singh and averments made therein was concerned, Mr Sethi submitted that a careful perusal of the reply would show that Hari Singh had not conceded the position that the land in issue belonged to the brothers and not exclusively to Hari Singh. In this regard reference was made to paragraphs 4, 5 and 7 of the said reply. Mr Sethi also contended that area of the land which was subject matter of CWP 376/1973 was only that which admeasured 156x90 sq. ft., therefore, compensation was sought only with respect to that area. Reliance in this regard was placed on the award (Ex. D1/26) (SI. NO. 13) to show the claim was with respect to area admeasuring 156x90 sq. ft. It was, therefore, contended that since Hari Singh had possessory rights in the area marked in Red in the site plan annexed to the CWP 376/1973, he obtained the Ashok Vihar property in lieu thereof after surrendering his possessory rights for construction of a police station. Mr Sethi submitted that the Ashok Vihar property was allotted exclusively to Hari Singh on 30.07.1982 and, possession thereof was taken exclusively on 19.10.1982. The sanctioned plan for construction of a super

structure was also obtained by Hari Singh exclusively, on 28.12.1982. None of these documents, according to Mr Sethi, have been impugned in the suit.

31.1 Mr Sethi stressed upon the fact that the premium for the Ashok Vihar property, i.e., a sum of Rs 3,27,000/- was paid by Hari Singh by raising loans from Vijay Kr. Goel and Neerja Goel after promissory notes (Ex. D-1/2 to 4) were executed in favour of the said persons. These amounts were re-paid by Hari Singh. In this regard reliance was placed on exhibits DW6/X. It was, therefore, sought to be contended that premium for the said plot was paid from the personal funds of late Hari Singh.

31.2 Mr Sethi also touched upon the fact that Hari Singh had filed three suits against Gulab Singh for recovery of loan taken by him. In those suits Gulab Singh had contended that the loan taken by him from Hari Singh, was spent on construction of the super-structure of the Ashok Vihar property. According to Mr Sethi, the Civil Judge rejected the plea of Gulab Singh and, passed a decree in each of the said suits against Gulab Singh. In this regard reliance was placed on exhibits DW-6/1, DW6-II and DW6-12 filed in the 1988 suit. In this connection Mr Sethi also referred to the fact that an appeal was preferred against one of the decrees by Gulab Singh, which was also, dismissed, and the said decree had become final.

31.3 Mr Sethi also sought to place reliance on a communication dated 21.06.1983 (Ex. D1/18 and D1/55) jointly written by Hari Singh, Mam Kaur and Rajbir Singh to Oriental Bank of Commerce stating therein that the Ashok Vihar property was that of Hari Singh alone, who had purchased the same from his individual funds. This, according to Mr Sethi, was in response to Gulab Singhs notice dated 16.06.1983 to the said bank.

31.4 Mr Sethi also adverted to the fact that he has filed a written statement affirming therein that Gulab Singh had made an application for inserting his name in the lease deed and that his application was rejected in view of the release deed having been signed by the brothers in favour of Hari Singh.

32. On the issue of whether an HUF existed, Mr Sethi submitted that the family was joint with respect to certain properties and that a partition took place qua these properties prior to September, 1981. It was submitted that existence of a joint family did not necessarily lead to a presumption that every property held by a member was joint. In any event, if any party were to assert to the contrary the burden lay on him, and such a burden had to be discharged by him in accordance with law. It was further submitted that in order to show that a property was a joint property, it was incumbent on the person, who alleges it to be so, to show that it was purchased from joint family funds or that the family possessed some joint family funds or property which gave income, which may have formed the nucleus, for purchase of such property. In the absence of proof of any such joint family property or nucleus, it cannot be said that a property is a joint family property. Reliance was placed on the judgment of the Supreme Court in the case of Appasaheb Peerappa Chandgade vs Devendra Peerappa Chamdgade & Ors.: 2006 (1) SCALE 184. Mr Sethi submitted that Gulab Singh had not been able to demonstrate that the HUF possessed joint property which generated income or the family possessed any nucleus which funded purchase of any joint family property. As regards the decree passed by Mr Gian Inder Singh, Civil Judge, the contention of Mr Sethi was that the decree was without jurisdiction in view of the provisions of Sections 55 and 185 read with entry no. 11 of Schedule (I) of the DLR Act; and being a nullity the said plea could be taken at any stage, and even in collateral proceedings.

33. Mr Sethi submitted that in the 1983 suit, the plaintiff has sought partition of properties referred to in paragraphs 2(a), 2(b) and paragraph 5 of the plaint. In so far as properties referred to in paragraph 2(a) is concerned, it was stressed that the counsel for Gulab Singh having submitted that he did not press his prayer in respect of the said property, demonstrated the falsehood, in the case, set up by Gulab Singh. In so far as property referred to in paragraph 2(b) of the plaint was concerned, Mr Sethi submitted that pursuant to the partition of the said property which took place prior to September, 1981, it had fallen to the share of Hari Singh, and Hari Singh had been deriving rent from the said property. In this regard reference was made to the affidavits of tenants, namely, Virender Chopra and Piara Singh (Exs. D1/28 and D1/29 respectively) filed in the 1983 suit. Reference

in this regard was also made to the release deed to show that rights in the said property were obtained in Hari Singh. In so far as property mentioned in paragraph 5(a) is concerned, according to Mr Sethi, again the partition took place prior to September, 1981 and it fell to the share of Rabjir Singh, Ramesh Kumar and Mahesh Kumar. It was contended that the said property was divided equally amongst the said persons; and that since then Ramesh Kumar and Mahesh Kumar had sold their shares vide sale deeds dated 24.02.1993 (Exs. DW6/1A and DW6/1B). In so far as the property mentioned in paragraph 5(b) was concerned Mr Sethi reiterated his contention made hereinabove. As regards distribution of Rs.80,000/- mentioned in paragraph 5(c) of the plaint was concerned, it was contended that the same was yet to be divided, and that, based on what was submitted vis-a-vis other properties, could be applied to money in issue, and accordingly, a decree could be passed in that regard. So far as the property referred to in paragraph 5(d) was concerned, it was submitted that the purported balance sum of Rs. 115 in the account of BOI was not available since money in the account had already been divided and the account closed with effect from 06.01.1984. Reference in this regard was placed on Exhibit D1/14. As regards property referred to in paragraph 5(e) was concerned, it was submitted that a plot in Rohini had been allotted, in which each of the parties, had an equal share. Based on the aforesaid contentions a prayer was made for dismissal of the suits.

34. I may only notice at this stage, the submissions of Mr J.K. Jain, the learned counsel for Har Chain Singh in the 1988 suit. Mr Jain relied upon the site plan appended in CWP 376/1973 to assert Har Chain Singhs right in property admeasuring 688 sq. yds in lieu of which Ashok Vihar property was allotted to Hari Singh. It was submitted by Mr Jain that Har Chain Singh was admittedly party to the said CWP 376/1973. Har Chain Singh had, according to Mr. Jain, a 1/3rd share in the surrendered land and, hence, was entitled to a share in the Ashok Vihar property to the same extent. Mr Jain invoked the provisions of Section 14 of the Limitation Act to seek exclusion of the time in approaching this court by way of a suit. In this regard a reference was made to the following dates: Vide order dated 09.05.1973: this court directed that the petitioners in CWP 376/1973 would not be disposed; by order dated 09.03.1981 passed in CM No. 656/1981 this court directed that the DDA will not carry out construction on the land which was subject

matter of the writ petition; by order dated 05.08.1982: passed in CM No. 3577/1982 the court modified the order and permitted DDA to construct a police station, as also allowed it to raise a wall at point GH as shown in plan appended as annexure Y to the writ petition; on 07.12.1982: Har Chain Singh filed an application for recall of order dated 05.08.1982, by order dated 20.04.1983 the said application was dismissed and a Special Leave Petition preferred against the said dismissal was also rejected by order dated 12.09.1983; consequent thereto on 15.04.1983: Har Chain Singh filed a case before the Tehsildar, who referred the matter to the SDM/ Revenue Assistant; on 23.09.1988 : the Revenue Assistant rejected the petition of Har Chain Singh on the ground of maintainability. These proceedings were carried to the Financial Commissioner, who, by order dated 20.03.1989 remanded the case to the Tehsildar for a fresh decision. In these circumstances, Mr Jain said that it could not be said that 1988 suit was beyond time.

REASONS :-

35. Having perused the pleadings and the evidence on record and also heard the learned counsels for the parties, according to me, the following aspects clearly emerge in the case. There are today two main protagonists in the captioned suits before me. On the one side is Gulab Singh, who, alongwith Rajbir Singh, Ramesh Kumar and Mahesh Kumar represent one side of the coin while the other side comprises of the LRs of late Hari Singh, namely, Satyender Singh, Jitender Singh and Yudhister. In so far as Rajbir Singh, Ramesh Kumar and Mahesh Kumar are concerned they have admittedly changed their stance in the 1987 and 1988 suits as against that which they professed in the 1983 suit; though at the time of leading evidence in the 1983 suit they supported the stand of Gulab Singh the question which arises in these circumstances is: Should I take the changed stand that into account in considering the reliefs sought by Gulab Singh? Undoubtedly, Gulab Singh has been consistent in his stand in all three suits. Whether he is right or not shall be examined by me hereinafter; however, what is very clear to me is that in considering the validity of the pleas of Gulab Singh, I ought not to, in these circumstances, take into account either the pleadings or the testimony of Rajbir Singh, Ramesh Kumar and Mahesh Kumar to the extent they are beyond their

stand as reflected in their pleadings filed in the 1983 suit. This has also been consistently the mandate of this court in various orders passed from time to time to which I have already referred to in the earlier part of my judgment while, recording the submissions of Mr Sethi, who appears for the LRs of late Hari Singh. Therefore, I propose to proceed accordingly.

36. The first and foremost issue which arises for consideration is: whether there exists a HUF. On a perusal of the pleadings, it is quite clear that though both parties agree to the fact that a HUF was in existence, what is disputed is the point in time when it came into existence. Gulab Singh in paragraphs 1 and 2 of the plaint, filed in the 1983 suit, has asserted that the HUF came into existence on the demise of their father Ramchander. He further asserted that late Hari Singh being the eldest male was appointed as the Karta of the said HUF which consisted of Gulab Singh, late Hari Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar. In response, late Hari Singh in his written statement stated as follows: "It is denied that M/s Hari Singh & Bros. HUF, came into existence on the death of late Shri Ramchander. The property left by late Shri Ramchander was acquired and every member, i.e., parties hereto, received their respective share of compensation in their individual capacity. It is later on, that the parties hereto reunited and formed an HUF under the name and style of M/s Hari Singh & Bros. when 80 currency notes of Rs 1000/- each were demonetized and the Income Tax authorities gave recovery notices. It is also denied that defendant no. 1, Shri Hari Singh, was appointed as karta on behalf of the said HUF. In fact, Shri Gulab Singh, plaintiff, always acted as de-facto Karta and managed the affairs of all the joint properties." (emphasis is mine)

37. In view of the stand taken by Hari Singh in his written statement, it would have been the logical endeavour of Hari Singh or his LRs to demonstrate that HUF got formed only when the issue of demonetization of thousand (1000) rupee currency notes came to fore or the Income Tax authority took a preceptitative action in pursuance of the purported infraction of law. This apart, Hari Singh has taken the stand in the pleadings that the HUF was disrupted and it was, therefore, only thereafter that he started taking steps in his individual capacity in various litigations pending in court including those steps which had been taken in connection with

CWP 376/1973. Curiously, Hari Singh in his written statement did not fix an exact as to when the HUF was disrupted. There is, however, in the written statement of Hari Singh while alluding to partition of properties of the HUF, a vague reference to a period prior to September / November, 1981. How far back in point of time one is to travel is not known.

37.1 Therefore, what is clear is that, while contesting parties are ad idem that there was a HUF formed, what is disputed is the time of its formation and disruption. The other point of contest, is that, did the HUF own properties. This issue is best answered once again by the stand taken by Hari Singh in his written statement. For this purpose, I may only extract the averments made by Hari Singh in the following paragraphs of the written statement being his "reply on merits":

"9. Para 9 is absolutely wrong and as such denied. That on partition of the joint and HUF properties, prior to September 1981, the plot which is in occupation of M/s Bharat Timber Traders and M/s K.P. Furnishers as tenants, has fallen to the share of Defendant NO. 1 and since 16th November, 1981 defendant no. 1 is realizing the rent from the said tenants "

10. Para 10 is absolutely wrong and as such denied. As stated above, the plaintiff Gulab Singh was himself the de-facto Karta and managing HUF properties prior to 16th November 1981, and it is he who is liable to render accounts of all the income and expenses ."

11. . HUF was divided by metes and bounds prior to 1981 and a copy of the registered relinquishment deed executed by the plaintiff stating the said facts is attached hereto as Annexure Q. The suit is frivolous and vindictive as the parties have already partitioned their joint properties and are enjoying their shares separately ."

13. Defendants No. 2 to 4 have also opposed and condemned the frivolous and vindictive stand of the plaintiff rightly as they all know that the joint properties have already been partitioned before 16th November 1981 and neither the plaintiff nor defendants no 2 to 4 have any share or interest in the plot no. 17, Community Centre, Ashok Vihar, Delhi, nor the construction made thereon." (emphasis is

mine)

38. A reading of the aforesaid clearly show that not only was there an HUF in existence but there was also, according to Hari Singh (and now his LRs), properties owned by the HUF. It is well settled that an HUF is presumed to continue in existence till such time the contrary is proved, a party which raises the plea of partition is required to prove the same. A mere fact that some portion of property is in separate possession of one of the co-sharers would not lead to a presumption that there is a partition in the joint family; there are other factors to be considered. (See observations in *Chinthamani Ammal vs Nanda Gopal Gounder & Anr.*: (2007) 4 SCC 163 paragraph 17 at page 168).

39. In this background what appears to be the pivotal aspect of this case is the existence and the legal efficacy of the release deed, to which undisputedly all five brothers are signatories. Hari Singh's defence, as a matter of fact, to a substantial degree rests on this aspect. Let me, therefore, extract the release deed in its entirety, as it is both a crucial and even otherwise not too lengthy a document:

"Release Deed

This Agreement made this 16th day of November 1981 between Shri Hari Singh son of Late Ch. Ramchander of the one part, hereinafter known as the FIRST PARTY and Shri Gulab Singh, Shri Rajbir Singh, Shri Ramesh Kumar and Shri Mahesh Kumar, all sons of Late Ch. Ramchander, all residents of village Wazirpur, Delhi 110052 of the other part, hereinafter known as the SECOND PARTY.

WHEREAS there is a joint family property bearing Khasra No. 533 measuring 23 bighas and 10 biswas in village Wazirpur, Delhi.

AND WHEREAS the said Khasra No. 533 was mutually divided and partitioned between late Ch. Ramchander and other Co-owners by virtue of judgment and decree passed in Civil suit NO. 339 of 1958 decided by Sh. C.D. Vashisht, Sub Judge, Delhi, and by virtue of the said decree a parcel of land fell to the share of late Ch. Ramchander and his sons arrayed above as First and Second party.

AND WHEREAS disputes and litigation ensued between the parties hereto with various Departments because of the acquisition proceedings initiated by the Delhi Development Authority and other Departments.

AND WHEREAS out of the total land of approximately 1639 sq. yds. which fell to the share of late Ch. Ramchander, an area of 1124 sq. yds. is hotly contested and disputed and there is a litigation going on with the Police Authorities and also with the Delhi Development Authority, who have been allotted that piece of land for construction of police station.

AND WHEREAS the First party, Shri Hari Singh, being the First son, Manager and karta of the family has been looking after the family affairs and following up the litigation on behalf of the other family members. He was litigating with the Delhi Development Authority, Police Department at his own cost and expenses, and has spent considerable amount and furthermore he was carrying on his business in premises on a piece of land which was demolished in 1972 by the then SHO and his other sub-ordinate officers of Police Station, Sarai Rohilla, Delhi.

NOW THEREFORE IN WITNESS WHEREOF the IInd party do and each and every one of them doth hereby absolutely release and for ever relinquish their right and title if any to the said total land of 1639 sq. yds. which is now the absolute and exclusive property of the said Shri Hari Singh, First Party. IN WITNESS WHEREOF the parties hereto have put their hands on the day, month and year first stated above.

WITNESS:

(HARI SINGH) 1ST Party

RELEASEE

(GULAB SINGH) IInd party

(RAJBIR SINGH) IInd party

(RAMESH KUMAR) IInd Party

RELEASORS "

40. A perusal of the release deed would in a sense fortify the stand of Gulab Singh that there was in existence a HUF which had at its helm late Hari Singh as its Karta. The release deed also confirms the stand of Gulab Singh that the father late Ramchander co-owned and/or shared a joint family property which fell in Khasra No. 533. On passing of judgment and decree in Civil Suit No. 339/1958 by Shri C.D. Vashisht, the then Sub-Judge, a portion fell to the share of late Ramchander and his five sons, which included Gulab Singh, late Hari Singh, Rajbir Singh, Mahesh Kumar and Ramesh Kumar. The HUF continued to hold the property jointly post the death of Ramchander. The contradiction in Hari Singh's defence stands out when on the one hand he proclaims that a portion of the property referred to in the release deed was owned by gaon sabha and over which he had exclusive possessory right and on the other, he seeks to rely upon the very same release deed to demonstrate absolute relinquishment of right and title by his siblings in the properties which, according to him, form subject matter of the release deed. It also appears that because late Hari Singh was desirous of taking advantage of the release deed; and being aware of the fact that the release deed contained recitals which alluded to the fact that there was an HUF in existence of which he was a Karta, he sought to straddle two boats at the same time, in a manner of speaking. His first defence was that the properties which were jointly owned by the HUF were partitioned "prior to September 1981". (see paragraph 9 of the written statement of Hari Singh in 1983 suit). At another place, in paragraph 13 of the said written statement, Hari Singh stated that joint properties were partitioned before 16.11.1981. I will assume for the moment that the second statement was a typographical error or perhaps a Freudian slip. There is, however, in my view, one thing clear that the lack of clarity in the stand taken is deliberate. The words "prior" or "before" are vague not without intent. Since Hari Singh knew he would be unable to establish the disruption of HUF, he chose to rely upon, what could be termed as the second string to his bow, that is, the release deed. Hari Singh's stand, therefore, was partition or no partition, his siblings, which included Gulab Singh and the other three brothers had released their interest in the joint

family property exclusively in favour of late Hari Singh. His siblings being parties to the release deed they were bound by the terms. Therefore, before one proceeds further the bare terms of release deed need to be looked at. As indicated hereinabove, the recital of the release deed shows that there was an HUF in existence and also that late Hari Singh being the eldest son was the "Manager" and "Karta" of the said HUF who had been "looking after family affairs" and following up "litigation" "on behalf of other family members". The document in the recital also alludes to the fact that: since Hari Singh was litigating with DDA and Police Authorities at his own expenses, in respect of which evidently, he had spent a considerable amount of money; and given the fact that he was carrying his business in the "premises" "on a piece of land which was demolished in 1972" by the Police Authorities; others had decided to release their right, title and interest in land admeasuring 1639 sq. yds exclusively in favour of Hari Singh.

40.1 Even though there are signatures on the document of all the brothers and, as indicated above, none of the them have denied the execution of document; it has been the case of Gulab Singh that the purpose of this document was not to release his interest or that of the other brothers, i.e., Rajbir Singh, Ramesh Kumar and Mahesh Kumar in the piece of land admeasuring 688 sq. yds, which fell in Khasra No. 533, as alleged by late Hari Singh.

40.2 The question is why was the release deed executed. To my mind the answer to this question lies buried seemingly innocuously, though otherwise most revealing, in the pleadings of Hari Singh and the testimony of DW6. To this vexed question, the response somewhat to the effect that Gulab Singh, Rajbir Singh, Mahesh Kumar and Ramesh Kumar had applied for an alternate plot in lieu of land acquired by DDA and/or the police authorities; realizing that their applications would be time barred, and that Hari Singh's application was the only one which was in time they relinquished their interest in favour of Hari Singh. It is thus quite possible that the release deed was perhaps executed for the purpose of securing an alternate plot. The parties not wanting to rule themselves out of a share in pie have been nebulous, to say the least, as regards the terms of the release deed. Because the terms of the release deed lack clarity there is a need to look at the surrounding circumstances.

41. In this background let's look out what Gulab Singh has said. Gulab Singh has taken the stand both in his pleadings as well as the testimony that he along with his father and brothers and other persons, had filed a suit being: suit no. 339/1958 entitled Munshi & Ors. vs Omkar Nath Seth & Ors. for partition of various properties, which fell in Khasra No. 533. This suit was decreed by the then Sub-Judge, Delhi C.D. Vashisht vide judgment and decree dated 14.01.1959. The land falling in khasra no. 533 was divided into thirty three parts. It appears that parties did not possess or occupy the land in accordance with schedule appended to the decree, since in the meanwhile, the provisions of the DLR Act had been notified and, thereby the land, which was with the family, was taken as having vested in the gaon sabha. To contest this position, Gulab Singh contends, that his father along with his uncles, namely, Har Chain Singh and Raghunath Singh and certain other persons similarly affected, filed a suit being: suit no. 386/1959 entitled Munshi and Ors vs Gaon Sabha & Ors. The challenge related to vesting of land in gaon sabha falling in various khasra nos., including Khasra no.

533. The said suit was decreed by Shri Gian Inder Singh, the then, Sub-Judge of Delhi vide order dated 17.03.1961. Briefly, by virtue of the said judgment it was held that out of a total land admeasuring 19 bighas and 16 biswas (which stood vested in the gaon sabha) the vesting, to the extent of land admeasuring 14 bighas and 16 biswas was illegal. The result was that land admeasuring 14 bighas and 16 biswas reverted to the plaintiffs in the said suit, which included Ramchander and his brothers. However, an appeal was preferred against the aforementioned order being: RCA No. 375/1962. The appeal was disposed of by Sh. K.S. Sidhu, the then Senior Sub-Judge vide order dated 07.06.1963, by way of a compromise reached with gaon sabha whereby, the remaining five bighas also reverted to the plaintiffs. 41.1 At this juncture, it is important to note that late Hari Singh in his defence did not dispute the factual aspects of this part of the stand taken by Gulab Singh, that is, that judgment dated 14.01.1959 was passed by Sh. C.D. Vashisht, the then Sub-Judge or that with regard to the judgments passed by Sh. Gian Inder Singh, the then Sub-Judge and Sh. K.S. Sidhu, the then Senior Sub-Judge dated 17.03.1961 and 07.06.1963 respectively. The stand taken by Hari Singh is that, the judgment/ decree passed by Mr C.D. Vashisht dated 14.01.1959 was void as it was against the provisions of Section 55 and 185 read

with Entry 11 Schedule I of the DLR Act. On behalf of Hari Singh reliance was placed on the order passed by this court in Civil Revision No.154/1969 preferred by the Union of India. This court by order dated 24.12.1976 passed the following order:

"Mr. Lila Dhar submits that the appellate decree dated 7th June, 1963, passed by Mr. K.S. Sidhu, then Sr. Sub-Judge, Delhi, is without jurisdiction, since the civil court had no jurisdiction to entertain the suit, in view of the decision of the Supreme Court in Hatti V. Sunder Singh, AIR 1971 SC 2320. The petitioner will, therefore, treat the decree as without jurisdiction, void and ineffective. Under the circumstances, it is not necessary to go into this revision by which the court below has held that the application of the petitioner had abated as a whole. Under the circumstances, the revision is dismissed with no order as to costs."

42. Based on the aforesaid stand late Hari Singh contended that though the original owner of the land was goan sabha; he had possessory title in the land admeasuring 688 sq. yds. which was part of Khasra No. 533. It has emerged in the deposition of the LRs of Hari Singh, i.e., Satyender Singh (DW6) that on the land admeasuring 615 sq. yds. and 520 sq. yds. two immovable properties were built, which bear municipal no. 456 and 479 respectively. Therefore, what is contended is that the other part of the land which fell in khasra no. 533 was partitioned and/or released in favour of Hari Singh, who in turn having acquired possessory title of that, other part, admeasuring 688 sq. yds.; surrendered the same in favour of DDA for construction of a Police Station, and in lieu thereof, was allotted the Ashok Vihar property. This narration was important to understand the stand of Hari Singh with regard to the reference in release deed to land admeasuring 1639 sq. yds.

42.1 In my opinion the lack of clarity or ambiguity in the release deed whether deliberate or otherwise is quite evident. There is no reference whatsoever as to the location of the land admeasuring 1639 sq. yds. Since the document is unclear the evidence with regard to surrounding circumstances would have to be examined.

42.2 Gulab Singh in his testimony has admitted that what fell in their fathers share was land admeasuring 1800 sq. yds. However, in the replication he has referred to the area of the land as 1095 sq. yds. The release deed alludes to an area of 1639 sq. yds. Satyender Singh in his testimony has attempted to explain as to how one could come to the figure of 1639 sq. yds. The relevant part of that testimony of Satyender Singh has already been extracted in the earlier part of my judgment. Only to recapitulate over here, I may advert to the same briefly. Satyender Singh (DW6) has stated that the said land had a house constructed on it being house no. 456 and two parcels of land evidently adjoining the house admeasuring 520 sq. yds and 688 sq. yds. The house bearing municipal no. 456, according to Satyender Singh (DW6) was constructed over an area admeasuring 615 sq. yds. Pursuant to an oral partition of the house in 1972-73, the land on which the said house was situated, was divided into six portions bearing nos. 456/1 to 456/6. The six portions were in the name of five brothers, i.e, Gulab Singh, Hari Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar and in addition, the mother Mam Kaur. Out of 615sq. yds. over which the original house no. 456 was constructed, an area of only 431 sq. yds. was taken into consideration in arriving at the total area of 1639 sq. yds. Therefore, the figure of 1639 sq. yds. is a sum total of land in three parcels admeasuring 431 sq. yds, 520 sq. yds. and 688 sq. yds.

42.3 The remaining portion out of 615 sq. yds, according to Satyender Singh (DW6), was owned by Hari Singh. Satyender Singh (DW6) has also accepted in his testimony that property bearing no. WP-479 was situated on land admeasuring 520 sq. yds. It has been the stand of Satyender Singh (DW6) and his counsel Mr Sethi, appearing before me, that property no. 479 was in the possession of late Hari Singh, who was the owner of the property, pursuant to an oral partition carried out prior to September, 1981. The assertion of Satyender Singh (DW6), in his testimony, to that effect for the sake of convenience is extracted hereinafter:

"That the deponent also states that there was oral partition between brothers prior to September, 1981 and in the said oral partition plot No. 479, Shiv Market, Village Wazirpur, which was vested in Goan Sabha and was in occupation of M/s Bharat Timber Traders and M/s K.P. Furnishers as tenants, had fallen to the share of deponents father .." (emphasis is mine)

43. Three things emerge from this stand of Hari Singh. First, that apart from a bare assertion of Satyender Singh (DW6) in his deposition, there is no corroborative evidence on record as to what was the composition of the area admeasuring 1639 sq. yds referred to in the release deed; since the total area, which the father Ramchander actually acquired, as against what was physically in possession of Ramchandars family, is not known. Second, the exact location of the land is not known. One can only hazard a guess as in the recital there is a reference to land being acquired for the purposes of construction of a police station. Even this does not help the cause as, it is neither parties case, that land admeasuring 1639 sq. yds. was taken over by DDA for construction of the police station. Third, and this is most crucial aspect; which is, why would Hari Singh seek relinquishment of interest by his brothers, in respect of properties which had, according to Satyender Singhs (DW6) testimony, already fallen to the share of his father pursuant to an oral partition, in 1972-73. If land admeasuring 520 sq. yds, on which property bearing no. 479, is built; is taken out from the picture, then mathematically the reasoning given by Satyender Singh (DW6), as to how parties have arrived at the land admeasuring 1639 sq. yds., would not add up to the figure of 1639 sq. yds.

44. This apart, Satyender Singh (DW6) in his testimony has also accepted the fact that land on which property bearing no. 479 was built, as well as 688 sq. yds. was subject matter of CWP 376/1973. The relevant part of his testimony, which relates to this aspect of the matter specifically, for the sake of convenience is extracted hereinbelow: "There existed a property bearing no. WP-479 on the land admeasuring 520 sq. yds. at the time of execution of the release deed situated in the . It is correct the land measured 688 sq. yds. and 520 sq. yds. were part of the subject matter of civil writ petition 376/1973". The said writ petition being CWP No. 376/1973 was filed admittedly by thirty (30) petitioners, out of which five (5) petitioners were the five (5) brothers alongwith their uncles Har Chain Singh and Raghunath Singh, who were impleaded as petitioner nos. 1 to 7 respectively.

45. In paragraphs 1 and 2 of the CWP 376/1973 it has been clearly stated that the writ petitioners are "co-sharers and co-owners" of the land bearing khasra no. 533/1 min situate in village Wazirpur, Delhi. Admittedly, the thirty (30) writ petitioners together had filed an interlocutory application, i.e., 332/1981 wherein, in

paragraph 4 a similar statement had been made by the petitioners. In this application an injunction was sought against the official respondents from continuing with construction of the police station at the place indicated in the site plan Annexure Y enclosed at points C, D, E & F. This application was moved in the light of an earlier order dated 09.05.1973 whereby, the court had enjoined the official respondents from dispossessing the writ petitioners. Since the official respondents continued to violate the injunction order, another interlocutory application being CM No. 656/1981 was also filed, in which, once again a similar averment was made, in paragraph 4, that the writ petitioners are "co-sharers and co-owners" of land falling in khasra no. 533/1 min situate in village Wazirpur, Delhi. Apart from this, admittedly late Hari Singh, in his reply; to an interlocutory application being: CM No. 5921/1982, filed in CWP No. 376/1973, by Har Chain Singh, seeking recall of order dated 05.08.1982 had made a similar assertion. Har Chain Singh had filed CM No.5921/1982 as he was aggrieved by the fact that injunction order dated 09.05.1981 was vacated by order dated 05.08.1982 at the behest of Hari Singh. These assertions were made by Hari Singh in paragraph 4 of his reply, while seeking to rebut the allegations of his uncle Har Chain Singh that he had played fraud on the court. The fraud alleged was that while the plan attached to the writ petition (appended as Annexure Y) showed him (i.e., Har Chain Singh) as a part owner of the land; Hari Singh had filed CM No. 3577/1982 in CWP No. 376/1973, on which order dated 05.08.1982 was obtained permitting construction of police station; evidently without Har Chain Singhs consent. The relevant extract of Hari Sings averments is as follows:

"However, it is added that land bearing Khasra No. 533/1 Min situated in village Wazirpur, Delhi State, was partitioned and at present petitioners nos. 1 to 7 only are joint owners of the portion marked Yellow in the Map attached hereto as Annexure A measuring 156x90 and the petitioners No. 1 to 7 have jointly claimed compensation qua the portion marked Yellow as is evidenced by the Award No. 19/74-75-A (Supplementary) made on 16th January 1975 (Copy attached hereto as Annexure B. It is, however, added that qua the portion marked Red in the site plan attached above as Annexure A, only Shri Hari Singh and his brothers, i.e., petitioners no. 1 to 5, are the sole owners and that position is squarely borne out from the fact that Shri Harchain Singh, petitioner no. 6 has claimed compensation

in the joint part and parcel of land marked Yellow in the plan. It is correct and admitted that each of the petitioners made separate and independent structures on their separated portions; likewise petitioners NO. 1 to 5 made constructions on their separated portion marked Red in the Plan Annexure A. There is, however, one parcel of land which continued to be joint with petitioners nos. 6 and 7, which is shown yellow in the plan, Annexure A." (emphasis is mine)

45.1 Similar assertions have been made in the later part of the paragraph which reads as follows:

"Similarly, only Shri Singhs name is mentioned in the site plan, Annexure Y, whereas Hari Singh and his brothers, i.e., petitioners No. 1 to 5, in fact, are the owners in possession of the portion marked Red in the site plan, attached above as Annexure A .

.In any case, the overwhelming and independent evidence attached above shows that the land marked Red is owned and possessed by petitioners no. 1 to 5, where Shri Hari Singh, petitioner no. 2, has been carrying on his sole- proprietary business under the name and style of M/s Capital Chemicals since 1965."

45.2 It was sought to be contended by Mr Sethi that averments made in paragraphs 5 and 7 of the reply (to which I will refer immediately hereinafter) would show that in so far as the area of land in lieu of which the Ashok Vihar property was allotted to Hari Singh, was solely in Hari Singhs possession; that against allotment of the Ashok Vihar Property, premium in the sum of Rs 3,27,600/- has been paid by him; and that ceremonies, such as bhumi poojan concerning the Ashok Vihar Property were performed by him alone. The relevant portions of paragraphs 5 and 7 of the said reply read as follows:

"It is admitted petitioner no. 2, Hari Singh, held a function and invited his relatives and friends on Bhumi Pujan of plot in Ashok Vihar, Delhi, but qua the said plot only petitioner no. 2 is the lessee who has purchased its leasehold rights by making payment of Rs 3,27,600/- @ Rs 1,050.00 per square metre. It is further submitted that Shri Hari Singh, petitioner no. 2, settled a long- standing dispute with the police authorities regarding possession of plot shown Red in the plan (attached

above as Annexure A) which was pending since 1971. Petitioner No. 2, who is the owner in possession with his brothers, arrayed as Petitioners no. 1 to 5, was carrying on the business of acids since 1965 under the name and style of M/s Capital Chemicals and had constructed its commercial premises by raising a boundary wall and a tin shed. The petitioner No. 2s sole-proprietory firm, M/s Capital Chemicals, was registered with the Sales Tax Department in 1966 and a copy of the Sales Tax Registration Certificate is attached hereto as Annexure C."

" Furthermore, the allotment of the leasehold rights in favour of petitioner no. 2 is not in lieu of the land shown Red, but is an independent transaction for which petitioner no. 2 has paid Rs 3,27,600/- @ Rs. 1,050 per square metre."

45.3 A perusal of the averments extracted to the extent they were relevant, would show that late Hari Singh had taken a definitive stand that: in so far as the portion marked in red in the site plan attached as annexure A was concerned; which is, the land admeasuring 688 sq. yds. he along with his other four brothers were owners of the said piece of land. In so far as the portion marked in Yellow in the map attached as annexure B is concerned he along with his two uncles (who were arrayed as petitioner nos. 5 & 6 in the writ petition), were joint owners. Therefore, for the LRs of Hari Singh to now contend that this was not the correct position, especially in view of the fact that they have adopted the pleadings of Hari Singh - this assertion cannot be countenanced. As a matter of fact in paragraph 5, Hari Singh has expressly stated that he along with his other four brothers was the "owner in possession" of the land earmarked in red colour in the plan appended as Annexure A. The only other assertion which Hari Singh seems to have made in this reply was that: he alone was carrying on the business in the name and style of M/s Capital Chemicals since 1965 and, that the Ashok Vihar property had been allotted to him exclusively; for which purpose, he had made the payment of the premium amounting to Rs 3,27,600/-.

45.4 As noticed above, in later part of the paragraph Hari Singh also asserted that the allotment of Ashok Vihar property "was not in lieu of the land shown in Red" but was "independent transaction for which he had paid the aforesaid premium". Notwithstanding this part of Hari Singh assertion, which I will discuss in the later

part of my judgment in light of the testimony on record; the fact remains that, in the writ petition, as against his uncle (i.e., Har Chain Singh), a definitive stand was taken that the brothers together were "owners in possession" of the land shown in colour red in Annexure A, which is the land measuring 688 sq. yds. Furthermore, I cannot remain oblivious to the fact that this reply was filed by Hari Singh on 07.01.1983 much after the execution of the release deed. Apart from the stand taken by Hari Singh in the said reply, it may be important at this stage to also look at the stand of the official respondents, in CWP 376/1973, as reflected in the affidavit-in-opposition of one, Sh. Krishan Pratap, the then Deputy Secretary, Land & Building, Delhi Administration. In paragraph (1) of the "reply on merits" the deponent Krishan Pratap has averred as follows:

"In reply to para 1 of the C.W., it is submitted that according to the Revenue Records petitioners at serial Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, and 30 are the owners of the land in dispute and petitioners at serial no. 11, 13, 14, 16, 17, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28 and 29 are the occupants. Petitioners at serial nos. 8, 12 and 26 are neither the owners nor the occupants on the land in dispute." (emphasis is mine)

45.5 A perusal of the aforesaid extract of the averments made in affidavit-in-reply would clearly demonstrate that even, according to the official respondents, petitioner nos. 1 to 5, (i.e., Gulab Singh, Hari Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar) and petitioner nos. 6 & 7 (i.e., Harchain Singh and Raghunath Singh) amongst others, fell in the category of "owners" of the land in dispute. Therefore, for the LRs of Hari Singh to contend otherwise is clearly contrary to the record.

45.6 It was sought to be argued on behalf of LRs of Hari Singh that the writ petition concerned itself only with a portion of the land admeasuring 156x90 sq. ft. and, not with the entire land. This assertion does not emerge from the writ petition. The writ petition was filed to challenge an acquisition notification dated 13.11.1959. As a matter of fact in the reply to CM No. 5921/1982 Hari Singh himself in paragraph 4 of the reply (extracted hereinabove) adverts to the fact that portion marked in yellow in the site plan appended as Annexure B admeasures 156x90 sq. ft. In

addition to this there is also a portion marked in red in the same plan. Therefore, even from the point of view of the brothers they had joint ownership with respect to both portions of the property. The portion marked in yellow, according to Hari Singh, was in joint ownership of the brothers alongwith their uncles, Har Chain Singh and Raghunath Singh, while the portion marked in red colour was in exclusive joint ownership of the five brothers alone. The fact that the brothers had lodged a claim for compensation in respect of an area limited to 156x90 sq. ft., does not really carry this argument any further for the reason that it was Hari Singhs stand that in so far as that area was concerned, they were entitled to compensation along with their uncles. Therefore, in the fitness of things they would have filed for a claim for compensation in respect of that area. The argument that in respect of the other portion, the gaon sabha has claimed compensation, as the brothers knew that they were not the owners of the said piece of land; firstly, goes against Hari Singhs own stated stand; and secondly, in my view, nothing can turn on that because gaon sabha has not to date raised any claim with respect to that portion of land, that is, the portion marked in red over which there is an inter se dispute amongst the brothers. As a matter of fact the gaon sabha is not a party to the present proceedings. Whether this adjudication will bind gaon sabha is an issue with which I am not concerned with in these proceedings.

45.6 In these circumstances, in my view the terms of the release deed being vague and obscure, to say the least, it cannot have any legal efficacy. The shifting stand of Hari Singh with regard to what was intended in the lease deed cannot but persuade me to come to the conclusion that LRs of Hari Singh cannot exclude the land measuring 688 sq. yds. from the fold of the HUF.

46. Apart from the above, the following circumstances undoubtedly point to the fact that Hari Singh all along accepted the fact that the properties, which were the subject matter of the writ petition, were jointly owned by all five brothers:

(i) the averments made in the application bearing no. 2556/1983 filed in CWP No. 376/1973. This application once again moved on behalf of all five brothers whose signatures are appended to the application;

(ii) the stand taken in paragraph 3(xiii) of the written statement filed by Hari Singh wherein, he categorically stated that the CM No. 3557/1982 was moved at the instance of Gulab Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar for the purpose of obtaining modification of the order dated 09.05.1973. This quite clearly demonstrated that modification was to enure to the benefit of all five brothers and not Hari Singh alone;

(iii) in light of the stand of Hari Singh in the written statement and because the legal representatives of Hari Singh had adopted the written statement filed by Hari Singh; when Satyender Singh (DW6) was confronted with this situation he tried to prortray that after the execution of the release deed all steps which Hari Singh took in the writ petition (CWP 376/1973) were taken by him (i.e., Hari Singh) in his individual capacity. To get out of a piquant situation caused by a specific averment made to the contrary in paragraph 3(xiii) of Hari Singhs written statement, Satyender Singh (DW6) answered the question most unsatisfactorily in the following manner: that the stand he had taken was correct, even while accepting that he had adopted the written statement of Hari Singh;

(iv) a close perusal of Satyender Singhs (DW6) testimony would show that he has accepted the position that all the five brothers in the writ petition were represented by a common counsel. This conclusion one can reach upon perusal of the response of DW6 to a question as to whether the signatures on the Vakalatnama, which authorized the counsel Mr B.N. Nayyar to act on behalf of all five brothers were those of his father, i.e., Hari Singh. DW6 accepted the fact that the signatures were those of his fathers. Therefore, the assertion of Gulab Singh that the application no. 3577/1982 was moved to seek variation of the injunction order for the benefit of all five brothers seems quite possible;

(v) in so far as payment of premium of Rs 3,27,600/- is concerned the stand of the contesting defendant has been that the money for the purposes of allotment was obtained by way of a loan extended by Sh. V.K. Goel and Ms Neerja Goel. DW6 in his testimony accepted the fact that while V.K. Goel had expired Neerja Goel was alive. Curiously enough, Neerja Goel was not produced as a witness. What is even curiouser is that in his deposition DW6 stated that the sum of Rs. 3,27,000/- was

extended in the form of drafts made by the Goels favouring DDA, and not Hari Singh. There was also an acceptance of the fact that there is on record no loan document evidencing the extension of such a loan by Goels to Hari Singh. This conduct seems out of the ordinary as a person who extends a loan would under normal circumstances either get a receipt signed in his favour evidencing the payment of money or at least have the instrument drawn in his favour from the person to whom the financial assistance is extended. Neither was done in this case. The creditor and debtor are not admittedly relatives. What was done instead was certain promissory notes were executed. These promissory notes had signatures of the advocate, who represented Hari Singh in respect of his income tax matters both in his individual capacity as well as a Karta as a witness. Admittedly, Hari Singh appears to have for some unknown reason extended the loans to the said advocate, i.e., Sh. Brij Mohan Tayla. Sh. Brij Mohan Tayla has not been produced as a witness. The pronotes are documents, which, in my view, have not been proved. In these circumstances, it would be difficult to accept the contention of Hari Singh that the sum of Rs 3,27,600/- was received as a loan from V.K. Goel and Neerja Goel. The mere fact that Hari Singh has placed on record details of payments in the form of cheque to evidence return of sum of Rs 3,27,600/- would not prove that what was paid to DDA, in the first instance, towards premium, was paid by him in his individual capacity and not as the Karta of the HUF;

(vi) furthermore, in the testimony of DW6 it has come through that monies have been given on loan to Jagdamba Traders and also Babu Lal a mason in the form of loan. Jagdamba Traders, admittedly is in the business of supplying building material, and those monies were admittedly paid out of the HUF account maintained with the BOI. There is on record nothing to show, except for bare assertion of DW6 that the monies paid to Jagdamba Traders and Babu Lal, mason were towards loan and not as payments with respect to work executed in relation to the super-structure built on the Ashok Vihar Property;

(vii) even while DW6 in his testimony asserted that after the execution of the release deed on 16.11.1981 in favour of his father Hari Singh, he owned the property in issue in his own right, accepted that the accounts in respect of the

property were not traceable. In my view, there is a convenient lapse in filing evidence which is perhaps in the custody of contesting defendants. In these circumstances, one can only draw an adverse inference that the property continued in the HUF fold;

(viii) admittedly, all five brothers have been allotted an alternative plot in Rohini pursuant to their success in the CWP 753/1983;

(ix) admittedly, the mother (Mam Kaur), who had an interest in the properties, which were subject matter of the release deed, was not a signatory to the release deed.

(x) The notice issued purportedly by Lekh Ram in 1961 (Ex. D1/34) putting to notice Hari Singh that the land in issue was owned by gaon sabha, was not proved. In order to prove the said notice (Ex. D1/34) Lekh Rams son, i.e., Suresh Khari was produced as a witness. In his testimony he accepted the fact that he was born after the date of the notice, i.e., post 1961. He, therefore, quite obviously had to state that he had no personal knowledge of the notice. He also went on to say that he believed that his father was a pradhan at the relevant time, since he was told so, by his father. As against this Gulab Singh has maintained that Lekh Ram was not the pradhan of the Wazirpur village. As a matter of fact DW6 in his testimony has said that pradhans were appointed usually for a period of one year and that two or three persons had been appointed as pradhans of the goan sabha, Wazirpur since 1961-1985. He did not seem to recollect the names of these persons. The testimony of DW6 in this regard is unreliable. The mere fact that the son of Lekh Ram has recognized the signatures on the purported notice (Ex. D1/34), would not lend any credibility to the document. The source of document is not proved. The assertion, based on the said notice, that the property was owned by gaon sabha, in my view, is not established. As observed by me hereinabove, in any event gaon sabha being not a party to the present proceedings, I am not called upon to comment on the same. Only to be noticed that in CWP 376/1973 DDA has taken the stand that the brothers along with their uncles were the owners of the property. As discussed above, CWP 376/1973 did concern 688 sq. yds., which was acquired by the DDA for construction of the police station;

(xi) it has come in the testimony of Hari Singh that M/s Capital Chemicals was closed in 1972. There is nothing to show by way of accounts, books or vouchers to demonstrate that M/s Capital Chemicals continued thereafter. As a matter of fact, DW6 has admitted in his testimony that those accounts have not been filed. This again persuades me to draw an adverse inference as against the contesting defendants.

47. It was also sought to be argued that the 1983 suit was not maintainable since Gulab Singh had not firstly, disclosed the factum of existence of release deed to which he was admittedly a party and, having known of its existence had not sought the requisite reliefs of declaration and cancellation of the release deed. In my opinion this argument is untenable for the reason that in so far as Gulab Singh is concerned his entire suit, i.e., 1983 suit, is cast on the basis that an HUF came into existence on demise of his father, and that the HUF had various properties within its fold which had not been partitioned including land admeasuring 688 sq. yds. It was Hari Singh, who, in his defence referred to release deed. In the replication Gulab Singh adverted to circumstances as to why the release deed was not legally efficacious, and in particular, was not meant to apply to the properties of the joint family including land admeasuring 688 sq. yds. Ordinarily no evidence would have been admissible to controvert or seek to vary the terms of the document. The document being in writing, ought to speak for itself, but as noticed above, the document is both vague and ambiguous and hence, one needed to look at the surrounding facts. Therefore, in these circumstances to suggest that the suit was not maintainable because Gulab Singh had not sought a declaration or cancellation of the release deed, in my view, is not sustainable. The document, in fact, as indicated by me above, became a pivotal part of Hari Singh's defence. The LRs of Hari Singh having failed, in my opinion, to prove the object and purpose for which the document was executed, cannot now seek to take advantage by propping up a plea that this court cannot examine the defence in the absence of pleadings impugning release deed. There is though no doubt that release deed has been impugned in the replication filed by Gulab Singh once a defence based on it was taken by Hari Singh in his written statement. That replication is part of pleadings cannot be doubted. This is especially so, in the circumstances, that Hari Singh seems to have taken the stand on a demurer that

even if land admeasuring 688 sq. yds. is taken to be part of the HUF, interest in that land and other properties covered by the release deed has been relinquished by his siblings in his favour. The crucial issue here is who was required to prove the circumstance surrounding the execution of release deed and what exactly it dealt with. In my view, it had to be the LRs of Hari Singh since a defence based on the release deed had been set up by Hari Singh; which is also the reason why Gulab Singh did not refer it in his examination-in-chief. Had Gulab Singh done so, it would have been a case of first raise a ghost, and then, try and slay it. A litigant is required to seek cancellation or setting aside of a document under Section 31 of the Specific Relief Act, 1963. If the document prima facie gives rights to the contesting party which could cause serious prejudice to him by exposing him to vexatious litigation where, however, the document on the face of it is illegal, inchoate and lacking in legal efficacy as is the case of a release deed in the instant case, the plaintiff cannot be non-suited on the ground that cancellation of the release deed was not sought.

48. I may also note at this stage that Gulab Singh had sent a legal notice dated 13.06.1983 (DW1/7A/1) seeking a partition of the properties held by the HUF. Hari Singh had replied to the said notice vide communication dated 27.06.1983 (Ex. DW1/D7/3B). It is quite curious that even though, according to Hari Singh, the release deed had been evidently executed by his brothers in November, 1981 relinquishing their share in the properties in his favour; in the reply Hari Singh chose not to rebut the claim of Gulab Singh to seek partition on the basis of the release deed.

49. It is quite obvious that when Hari Singh made an application bearing no. 3577/1982 in CWP 376/1973 he did not take the consent of his brothers which would have been necessary as, even according to him, as discussed above, in so far as the area marked in red on the site plan appended to the writ petition was concerned, the brothers together owned it. A perusal of averments made in the said application (i.e., CM No. 3577/1982 filed in CWP 376/1973) in particular paragraph 2 seems to convey an impression that it had been moved on behalf of the "petitioners". What is at least clear, is that, Hari Singh made no attempt to clarify that the application was being moved in his individual capacity, even though

the application was filed much after the execution of the purported release deed. By this application it was conveyed to the court that the petitioners had arrived at a settlement with official respondents vis-a-vis the dispute with regard to construction of police station on the said piece of land. In view of this settlement, a prayer was made to the court for vacation of order dated 09.03.1981 and, modification of the earlier stay order dated 09.05.1973. This application was filed on 04.08.1982 and, as indicated above, on 05.08.1982 the court modified its earlier order allowing the official respondents to construct the police station. What preceded this application is the letter dated 25.05.1982 (Ex. P6) issued by DDA. It was an offer made by the official respondents for allotment of a plot in Ashok Vihar provided "matter pending in the High Court is withdrawn". By a return communication dated 02.08.1982 (Ex. P7) Hari Singh accepted the offer; though this letter refers to another letter of the DDA dated 30.07.1982. Based on the aforesaid letters it was argued that these were written by official respondent/ DDA to Hari Singh in his personal capacity. It is quite evident that first letter could not have been issued to Hari Singh in his personal capacity since the offer was dependant on the Hari Singh withdrawing the writ petition being CWP 376/1973. This offer was made on 25.05.1982. The withdrawal of the "matter pending in the High Court" i.e., the writ petition could not have been made by one single petitioner. The subsequent letter of the DDA dated 30.07.1982 in response to which Hari Singh communicated his acceptance vide letter dated 02.08.1982; stressed the fact that Hari Singh was required to move an application "for withdrawal of the case". Hari Singh seems to have somehow convinced the official respondents that vacation and/or modification of the interim order was sufficient and, therefore, the premium against the proposed allotment in the sum of Rs 3,27,600/- ought to be accepted. This was a curious turn of events, as there was obviously no withdrawal of the court case. As indicated above, for such an application to be moved perhaps signatures of other petitioners were also required, in particular, those of his brothers which, Hari Singh side-stepped by moving CM No. 3577/1982. The DDA, in its written statement in 1987 suit, while acknowledging the fact that Gulab Singh had filed an application with them for inserting his name in the lease deed; aver that they had had the matter investigated through their legal department and, having found that the brothers

had executed a release deed in favour of Hari Singh were persuaded to the conclusion that Hari Singh was the only person who could have been allotted the land in issue. What the DDA skirted in its response, was the fact that, in CWP 376/1973 all five brothers had been arrayed as petitioners and, that the stay which had been granted in the petition, could have been varied only on a joint application by the petitioners, in particular, in respect of the portion of land which was in the possession of brothers, i.e., Gulab Singh and his four siblings as substantiated by their own official record, notwithstanding the existence of release deed. DDA has chosen not to dilate on the issue as to when the release deed was produced before it. And if the release deed was produced by Hari Singh was it not incumbent on DDA to get some kind of affirmation from the signatories to the release deed as whether it pertained to the land in issue. Obviously, DDA for some curious reason seemed keen to accept that the land admeasuring 1639 sq. yds. included a portion of land over which they wanted to built a police station. This is perhaps the reason that the counsel for DDA, at the proceeding held before court on 09.12.1999, submitted that they would go by the decision of the court with regard to the aspect of allotment and consequent execution of the lease deed.

50. In this regard an argument has been raised by the counsel for the LRs of Hari Singh that since the 1987 suit impugns only the lease deed it is not maintainable since the rights in the land vest on allotment and that execution of the perpetual lease deed is merely a ministerial act. In my view, this argument is misconceived. As indicated above, the letter dated 30.07.1982, which has been referred to as the letter of allotment, is a conditional offer whereby, in continuation of its earlier offer of 25.05.1982, DDA informed that they had approved allotment of the Ashok Vihar property (instead of another property, the particulars of which had been communicated vide its earlier letter dated 25.05.1982) on the following conditions: (i) premium of Rs 3,27,600/- would be paid within two months of the date of receipt in addition to payment of ground rent at the rate of 25%, which was to be charged from the date of possession of the plot; (ii) the offer was to be accepted within a period of seven days of issuance of the letter; (iii) that an application would be moved for withdrawal of the pending court case; (iv) that possession of the plot would be given on the premium of the plot being acknowledged by DDA, and a certified copy of withdrawal of the case being supplied to the DDA.

50.1 The aforesaid offer was accepted by Hari Singh evidently on 02.08.1982. Therefore, the said letter could not be termed as a letter of allotment as it was only a letter communicating the offer of the DDA on conditions stipulated therein. The fundamental conditions evidently having been fulfilled, the detailed terms, which bind the parties, were explicitly recorded in the lease deed which was admittedly executed on 26.09.1984. The rights and obligations of the parties, which bound the parties, obviously were not contained in the letter of offer dated 30.07.1982 and hence, cannot be termed as a ministerial act as contended by Mr Sethi, learned counsel for the LRs of Hari Singh.

50.2 To buttress his submission Mr Sethi has cited the two judgments; these being: Mohan Brothers (supra) and Manmohan Kishan Malik (supra).

50.3 The judgment passed in the case of Manmohan Kishan Malik (supra) is distinguishable. The brief facts obtaining in that case were; one Malik Arjun Das had obtained membership of the Supreme Court Co. operative House Building Society Ltd. (in short society) in 1961. In 1968 he chose the 1st defendant as his nominee in the society. The plaintiff and the 1st defendant were also legal heir of the original member Malik Arjun Das who, expired in 1974. The remaining defendant were legal heirs of the deceased legal heirs of Malik Arjun Das. Disputes arose between plaintiff and the 1st defendant on partition of the immovable property being sought and denied by the 1st defendant. One of the grounds on which 1st defendant resisted the maintainability of the suit was that he was the sole owner of the immovable property since the perpetual sub-lease deed was executed in his favour; and that, therefore, it was case of transfer of ownership by the society to which the provisions of Delhi Co-operative Societies Act, 1972 applied. In sum and substance it was contended that the other legal heirs had no abiding interest in the immovable property since he had acquired the property in his own right. What as however not in dispute was that Malik Arjun Das, the original member of the society, had been allotted the land in his favour, in his life time, upon payment of entire dues including monies or payment of stamp duty and registration charges for execution of a perpetual sub-lease. In this context the issue which the court was confronted with was: whether nomination of the 1st defendant by Malik Arjun Das would alter the right of succession where a

person dies intestate. This court, following the dicta of the Supreme Court in the case of Smt. Sarbati Devi vs Smt Usha Devi AIR 1984 SC 346 came to the conclusion that mere nomination would not displace the right of legal heirs which would otherwise devolve on them in accordance with law of succession. This is the ratio of the judgment. While coming to this conclusion the court dealt with the argument of the counsel for the 1st defendant (incidentally he was represented by Mr Sethi) that rights in the immovable property could only flow on execution of a perpetual sub-lease deed which admittedly had been executed in favour of the 1st defendant. As noticed, allotment of the immovable property took place in favour of Malik Arjun Das in his life time on payment of dues to the society. There is under the DDA (Disposal of Developed Nazul Land) Rules, 1981 (in short Nazul Rules) a concept of lessee, which is the society and a sub-lessee who is a member of the society. The sub-lease is executed between the society and the member on terms and conditions which is required to be "nearly as circumstances permit" in accordance with forms A and B as prescribed under the Nazul Rules. It is in this context that the court held that execution of a perpetual sub-lease in favour of the 1st defendant by the society could not confer any independent right in him, since it was only a ministerial act. In this case there was firstly, no allotment in favour of late Hari Singh, it was, as discussed above only a conditional offer at the highest. Secondly, what was executed in favour of late Hari Singh was a perpetual lease deed and not a sub-lease. The said perpetual lease deed was executed between the President of India through DDA and Hari Singh. The detailed terms and conditions which bound parties are contained in the said perpetual lease deed. Therefore, the cause of action would necessarily arise on execution of the perpetual lease deed. This position is also consistent with Rule 22 of the Nazul Rules (Also see Rules 21, 23 and 42 of the Nazul Rules.) Thus the argument of Mr Sethi based on this judgment that cause of action in respect of the 1987 suit arose on 30.07.1982 and not 26.09.1984 when lease deed was executed is misconceived.

50.4 The other case cited to propound the same contention was Mohan Brothers (supra). This again was a case where the original allotment was made in favour of a group housing co-operative society. The real disputants were two members of the said society; in respect of a piece of additional land (in short plot), which was

shown to be under dispute in the record of the DDA. The question before the court was whether plaintiff no. 2 claiming right over the said piece of land had come to court within limitation to displace the right of defendant no. 3. From the facts stated in the judgement it appears that a lease deed was executed in favour of the society on 12.02.1985 in respect of all plots including the plot in issue, and the allotment was made in favour of defendant no. 3 three days later on 15.02.1985. The suit was filed 15 years later. It is in this context that the court observed that the cause of action arose on allotment of the plot in favour of defendant no. 3. We are, in the instant case, seized with execution of a perpetual lease deed as noticed above. Furthermore, what is termed as allotment is in substance, as discussed above, at the highest a conditional offer of DDA. The ratio of this judgment is clearly distinguishable.

51. Another argument advanced by Mr Sethi, on behalf of LRs of Hari Singh, was that the 1987 suit was barred under Section 53B of the DDA Act. In this regard, as noticed in the earlier part of my judgment, it was argued that the limitation prescribed was a period of six (6) months except for a suit for recovery of immovable property or declaration of title. The 1987 suit not being of the like nature, it was argued it would be barred by limitation.

51.1 The other argument of bar of limitation was based on the fact that the limitation would commence from issuance of letter dated 30.07.1982, which, in view of my discussion above, does not stand to scrutiny as the rights and obligations got crystallized only on execution of lease deed on 26.09.1984. The 1987 suit, which was moved on 13.07.1987, was well within the period of three years.

51.2 In regard to the bar of Sub-Section 2 of Section 53B of the DDA Act, it may be pertinent to note that Gulab Singh in paragraph 9 of the 1987 suit specifically stated that a requisite notice under Section 53B of the DDA Act read with Section 80 of the CPC dated 09.02.1987 was served on DDA (i.e., defendant nos. 1 and 2 in the said suit) and that despite receipt of such notice no reply has been received. In the written statement filed on behalf of DDA (i.e., defendant nos. 1 and 2 in the 1987 suit) there is a bald denial of this averment without elucidating as to whether

or not a notice was received. In these circumstances, one can only draw an adverse inference against the DDA that a notice was received. In paragraph 12 of the 1987 suit Gulab Singh as averred as follows:

"That the cause of action against the defendant arose for the first time on 26.09.1984 when the lease deed with regard to the plot in question was illegally and malafidely executed by the defendants no. 1 and 2 in favour of Sh. Hari Singh, defendant no. 4 alone. The cause of action further arose on 29.11.1983, 27.06.1984 and 20.09.1984 when the plaintiff sent representations to defendants no. 1 and 2. It is also arose on 09.02.1987 when the plaintiff served the defendant with a registered notice and it still continues."

51.3 In response to the averments made in aforesaid paragraph 12 of 1987 suit, the DDA has simply said that no cause of action has ever arisen in favour of the plaintiff (i.e., Gulab Singh). Once again the averment is bald. In the notice of 09.02.1987 (Ex. DW1/D7) Gulab Singh inter alia had contended that he, by an earlier notice dated 11.07.1983, called upon the DDA to reopen the case pertaining to Ashok Vihar property, and thereafter to register a lease deed in the name of all five brothers including Gulab Singh. This assertion made in paragraph 5 of the said letter dated 09.02.1987, was prefaced with the stand taken by late Hari Singh in January, 1983 regarding the status of the property in response to CM Nos. 5921-22/1982 filed by Har Chain Singh in CWP No. 376/1973. In the written statement, while DDA conceded that they had carried out investigation, they did not aver as to whether the result of the investigation was communicated to Gulab Singh. Gulab Singh in the very same letter of 09.02.1987 has also referred to earlier representations dated 29.11.1983 and 27.06.1984. Obviously the DDA gave a short shift to these representations and proceeded to execute the lease deed. In these circumstances, in so far as Gulab Singh was concerned, according to him, the cause of action did not arise or would arise only after a reasonable time had lapsed post issuance of letter dated 09.02.1987. The DDA has not taken a stand that it responded to letter dated 09.02.1987. Neither has DDA taken the stand that the suit is barred under the provisions of sub-Section (2) of Section 53B of the DDA Act. The suit was admittedly filed on 14.05.1987. In these circumstances, in my opinion, it cannot be said that the suit is barred by limitation.

In any event a perusal of prayer clause (a) and (b) in the 1987 suit seems to suggest that in sum and substance Gulab Singh is seeking a title in the leasehold interest in the Ashok Vihar property. The prayer clause (a) reads as follows:

"(a) pass a decree for declaration in favour of the plaintiff and against the defendants no. 1 to 3 calling upon them to reopen the case of allotment of the suit plot bearing no. 17, Ashok Vihar, Community Centre, Delhi 52 and to cancel the lease deed dated 26.09.1984 in the name of Shri Hari Singh, defendant no. 4.

(b) Pass a decree for mandatory injunction in favour of the plaintiff and against the defendant nos. 1 to 3 directing them to execute a fresh lease deed of the aforesaid plot no. 17, Community Centre, Ashok Vihar, Phase-I, Near Deep Cinema, Delhi 52 in the name of serve Shri Gulab Singh, Hari Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar sons of late Shri Ramchander, the plaintiff and the defendant nos. 4 to 7 as members of HUF M/s Hari Singh & Bros."

51.4 A meaningful reading of the plaint would show that the six months provided in sub- Section (2) of Section 53B of the DDA Act would not apply in this case. In any event, in my opinion these provisions are incorporated for the benefit of DDA. If the DDA chooses not to raise any objection as to the maintainability of the suit on grounds prescribed under Sub- Section (2) of Section 53B of the DDA Act and chooses to receive the verdict from the court on merits, the suit cannot be thrown out on this ground alone. This is more so in the present case as, the lease deed came to be executed since DDA allowed one of the petitioners in CWP 376/1973, that is, Hari Singh to arrive at a compromise with it, without taking into confidence the other writ petitioners who had a subsisting and abiding interest in the matter.

52. In order to show that Hari Singh had exclusive possession of 688 sq. yds. it was contended that he was carrying on business in the name and style of M/s Capital Chemicals since 1965 and for this purpose reliance was placed on the income tax assessment orders dated 31.07.1975 (Ex. DW1/20). Apart from the fact that this document is not proved it belies credibility that even though Hari Singh has been carrying on business evidently from the property in issue, i.e., land admeasuring 688 sq. yds., no documents have been filed for the period 1965-1972. Gulab Singh, on the other hand, has consistently taken the stand that from

1965-1972, the said business was carried on by all five brothers and operations of M/s Capital Chemicals were stopped in 1972. The fact that no record of the period 1965-1972 has been filed would only lead me to draw an adverse inference against Hari Singh. In any event, merely because one of the brothers, i.e., Hari Singh was carrying on his business from the land in issue admeasuring 688 sq. yds. would not necessarily lead to the conclusion that there was a partition of the land in favour of late Hari Singh. As noticed by me hereinabove, late Hari Singh has himself taken a stand in the reply filed to CM No. 5921/1982, filed in CWP 376/1973, that, he along with his four brothers, was the "owner in possession" of the said land, i.e., land measuring 688 sq. yds.

53. Much was sought to be made out by Mr Sethi in respect of affidavit dated 05.01.1982 filed by Gulab Singh in CM No. 5921/1982 in CWP 376/1973. A careful perusal of paragraph 1 would show that Gulab Singh has consistently, in tandem with the reply filed by Hari Singh; to the very same interlocutory application (i.e., CM No. 5921/1982) stated that he along with his brothers, is the "owner in possession" of the disputed portion of land shown in red colour in the site plan appended as Annexure A, filed by petitioner no. 2 (i.e., Hari Singh). Thereafter, in paragraph 2 of his affidavit dated 05.01.1982 he stated that petitioner no. 2 (i.e., Hari Singh) being in possession since 1959 has been carrying sole proprietary business under the name and style of M/s Capital Chemicals and he constructed a boundary wall (156x90 ft.) along with tin shed. Paragraph 2, in my view, does not in any manner dilute the stand of Gulab Singh that all brothers were owners in possession. Hari Singh was in possession since 1959, is obviously an error, since Hari Singh himself claims to be that he has been running the business in the name and style of M/s Capital Chemicals since 1965. As indicated above, the mere fact that Hari Singh was running his business from the said piece of land would not demonstrate that there was a partition and thereafter the property was in sole and exclusive possession of Hari Singh. As a matter of fact in the first line of paragraph 2, all that has been said is that Hari Singh was in possession. It is not said that Hari Singh was in sole possession. What has been said is that M/s Capital Chemicals is a sole proprietary business. There is perhaps some shifting in stand, but, based on this averment alone one cannot come to the conclusion that the land in issue (i.e., property measuring 688 sq. yds.) had been partitioned, and that

thereafter its possession was entirely with Hari Singh.

54. Mr Sethi has also tried to rely upon the judgments obtained against Gulab Singh in the three suits filed by Hari Singh against Gulab Singh for recovery of the monies given as loan to Gulab Singh. It was contended that in those suits the defence taken by Gulab Singh was that those monies were spent for construction carried out on Ashok Vihar property. In my opinion, the controversy, which arose in those suits, and which was adjudicated upon, would not by itself resolve the issues raised in the present suit with regard to the nature of ownership of the property in issue. The argument, based on those judgments, again in my view, does not support the case of the LRs of Hari Singh.

55. This brings me to 1988 suit whereby Har Chain Singh has not only made a prayer that lease deed executed, qua the Ashok Vihar property, be declared void, but also sought a direction in the form of mandatory injunction requiring DDA to execute a fresh lease deed qua the Ashok Vihar property to the extent of his 1/3rd share in the surrendered land. It may be noticed that this suit was filed by Har Chain Singh on 28.11.1988. The cause of action, if any, ought to have arisen in favour of Har Chain Singh from the date of execution of the lease deed, i.e., 26.09.1984. In paragraph 33 of the plaint Har Chain Singh has averred that he was unaware of the fact that the lease deed had been executed in favour of the Hari Singh on 26.09.1984. It is further averred that he became aware of the same on 18.12.1985. The assertion of Har Chain Singh in the said paragraph is vague as he does not even say as to whether the representation was made in writing or oral. Furthermore, what is not articulated in the said paragraph of the plaint as to when Har Chain Singh became aware of the fact that said lease deed had been executed in favour of Hari Singh. The averments in paragraphs 33, 34 and 35, of the plaint are in fact tailored to cover the delay in filing the 1988 suit. This is quite evident from Har Chain Singhs own conduct. Har Chain Singh, admittedly had moved an application on 07.12.1982 for recall of order dated 05.08.1982 (passed in CM No. 3577/1982 filed by Hari Singh) seeking modification of the earlier orders of the court dated 09.05.1973 and 09.03.1981. The said application was dismissed admittedly by this court on 20.04.1983. While discussing the said application, the court observed that whatever were the rights of the writ petitioner qua land in issue

on which the police station was sought to be constructed being disputed questions of fact; these could not be adjudicated in a miscellaneous application. The court, specifically observed that if Har Chain Singh was aggrieved by the action of Hari Singh, it was open to him to take an appropriate action in that regard. It was, in these circumstances, that the application was dismissed by the court. A Special Leave Petition preferred against order dated 20.04.1983, was also dismissed. On his own showing instead of coming to this court, by way of an appropriate remedy, Har Chain Singh filed a case before the Tehsildar on 15.04.1983, who, then referred the matter to the SDM/ Revenue Assistant. The Revenue Assistant dismissed the matter by order dated 23.09.1988; however, the Financial Commissioner remanded the case vide order dated 20.03.1989 for a fresh decision in the matter. These facts, when appreciated in the light of what can only be construed as deliberately vague pleading in the 1988 suit, would show that Har Chain Singh was perhaps aware of the imminent execution of lease deed on 26.09.1984. It appears that only after the Revenue Assistant had dismissed the application, did Har Chain Singh decide to move this court by filing the 1988 suit; on 28.11.1988. An argument was raised by Mr Jain that the time spent in prosecuting the case before the Revenue Assistant ought to be excluded under Section 14 of the Limitation Act. This argument is in the teeth of the assertion made in the plaint. In the plaint it is sought to be conveyed that Har Chain Singh was unaware of the fact that a lease deed had been executed, whereas during the course of argument a remission was sought on the ground that Har Chain Singh had been bonafidely pursuing a wrong remedy. It is settled that the provisions of Section 14 of the Limitation Act will come into play only if a proceeding is prosecuted bonafidely in another court, in respect of the same matter, in regard to which otherwise that court does not have jurisdiction, to accord relief, and that court dismisses the matter on the ground of jurisdiction or based on cause of like nature. Quite clearly the proceedings before the Tehsildar could not have been filed for seeking relief which is sought in the present proceedings. As a matter of fact when proceedings were commenced before the Tehsildar the lease deed had not been executed. The fact that the plea of the exclusion of time is not bonafide is quite evident from a perusal of the assertions made in CM No. 5921/1982 (filed in CWP 376/1973 by Har Chain Singh). In the said Interlocutory Application Har

Chain Singh, inter alia, has averred that he became aware of the allotment of Ashok Vihar Property in favour of Hari Singh pursuant to a compromise arrived at with the Statutory Authority unilaterally and without his consent, only when, Hari Singh performed bhoomi puja on the said land on 27.10.1982. These averments quite clearly show that Har Chain Singh had become aware of at least this fact that DDA had taken steps in the matter inimical to his interest. To accept that thereafter Har Chain Singh did not keep track as to when the lease deed was executed in favour of Hari Singh would stretch credulity. The reason being: that it would be quite out of the ordinary to accept the fact that Har Chain Singh would have waited till December, 1985 to make a representation to DDA with respect to the status of the land. Moreover at the hearing I was informed that the financial commissioner has remanded the matter for a fresh decision in the matter. For all these reasons, according to me, Har Chain Singhs suit, i.e., 1988 suit, is barred by limitation and Section 14 of the Limitation Act would not come to his rescue in the instant case for the reasons given hereinabove.

56. Before I conclude, let me refer to those judgments cited by Mr Sethi in support of his submissions which have not already dealt by me in the earlier part of my judgment.

56.1 S P Chengalvaraya Naidu (supra). In view of the discussion above, in my opinion the judgment cited by Mr Sethi in support of his various submissions are not applicable in the facts obtaining in the instant case. Briefly, S P Chengalvaraya Naidu (supra) was cited to buttress his submission that since there was an alleged suppression of the release deed Gulab Singh should be non-suited. I have already discussed in detail my view as to what is the position vis-a-vis the release deed. Recourse has been taken to the release deed by the contesting defendants i.e., late Hari Singh (now LRs of Hari Singh) to shore up their defence that assuming that the properties covered by the release deed were not partitioned, Gulab Singh and other siblings of late Hari Singh had relinquished their shares in the properties purportedly covered by the release deed. The ratio of the case cited pertains to a fraud played on the Court. Gulab Singhs stand, inter alia, that the release deed had no legal efficacy as it was not executed for the purposes which were advanced by late Hari Singh, in particular, that it did not include the property

admeasuring 688 sq. yards., has found acceptance with me based on appreciation of evidence on record. Therefore, in my view, this judgment can have no application.

56.2 Mohd. Noorul Hoda (Supra) case primarily dealt with issue as to which of the two articles of the Limitation Act would be applicable i.e., Article 59 and Article 113 of the Schedule of the Limitation Act, 1908. This issue arose in the background that the title suit of the petitioner before the Supreme Court, had been dismissed on the ground that his benamidar was attributed by the Court as having knowledge of a title suit filed by the contesting party. In the suit filed by the contesting party a preliminary decree as well as final decree had been obtained. The Court came to the conclusion that in these circumstances the knowledge of the benamindar of the petitioner would be construed as the date on which knowledge of the petitioner since the benamindar had filed the purported title deed, relied upon by the petitioner in his title suit, in the contesting party's suit. Therefore, the Court came to the conclusion that Article 113 was inapplicable in the facts of the said case. In coming to this conclusion the Court referred to the provisions of Section 31 of the Specific Relief Act, 1963 which relates to cancellation of instruments. The Court observed that the plaintiff is required to seek a declaration of setting aside of such a document. In view of the discussion in the earlier part of my judgment, it is quite evident that the prayer for declaration is implicit in the prayer for partition, therefore, no separate prayer was required in the circumstances of the case where the contesting defendants propped up the release deed to buttress their alternate stand of relinquishment of interest in their favour. The judgment is thus distinguishable on facts.

56.3 Anand Prasad Agarwalla (supra) case appears to have reached the Supreme Court against an interlocutory order. The observations relied upon by the learned counsel Mr Sethi were those primarily contained in Paragraph 6. The opening line of paragraph 6 clearly indicates that the Court while observing that unless a document which was a sale certificate in that case is set aside it would continue to have validity and force was prefaced by a caveat that the Court does not purport to hold a "mini trial" at the stage of grant of temporary injunction. In this case after evidence has been led I have come to a conclusion as to the lack of legal efficacy

of the release deed. Therefore, in my view the said judgment cannot apply to the facts of the present case.

56.4 Subodh Kumar Gupta (supra) case pertained to an issue involving provisions of Section 20 (c) of the Code of Civil Procedure, 1908 (in short CPC). The Supreme Court was called upon to decide as to whether the Courts below had correctly rejected the plaint on the ground that no part of cause of action arose within the territorial jurisdiction of the Chandigarh Court. In sustaining this conclusion the Court adverted to, amongst others, a settlement agreement arrived at between the contesting parties which was apparently executed in Bhilai. Taking resort to this, apart from other factors, the Court concluded that unless the said settlement agreement is set aside there was no question of the Chandigarh Court entertaining a suit for dissolution of the partnership and rendition of accounts which was the main relief sought for in the suit. The Court came to the conclusion that therefore no part of cause of action arose within the territorial jurisdiction of Chandigarh. The contesting party in that case seemed to have raised no issue vis-a-vis the settlement agreement; such is not the situation obtaining in the present case. Once again in my view this judgment cannot apply to the facts of the present case.

56.5 The position is no different in Jaideep Bajaj (supra) case. In Jaideep Bajaj (supra) case the court was called upon to decide a preliminary issue as to whether the suit before it was barred under the provisions of Order 2 Rule 2 and Order 23 Rule 1(4)(b) of the CPC. These issues arose in the background of the fact that an earlier suit which had been filed by the plaintiff for injunctive reliefs had been pivoted on the failure of the contesting defendants to fulfill their obligations under the relinquishment deed. The earlier suit was withdrawn. Thereafter a fresh suit for partition was filed in which one of the prayers was for cancellation of the same relinquishment deed of which reference had been made in the earlier suit. It is in this context the Court observed that unless the relinquishment deed is cancelled plaintiff cannot lay claim on the suit property, and thus construed that the subsequent suit was barred as no fresh cause of action had arisen. The facts obtaining in that case make it clear that it has no applicability to the instant case.

56.6 In Alluri Venkatapathi Raju (supra) the decision of this case turned on facts of that case. In that case the Court was called upon to consider whether there was separation of the joint family. Based on evidence the court came to a conclusion that a joint estate obtained in favour of the appellant before it. The observations to which reference was made would clearly show that they do not in any manner further the case of the contesting defendants in the instant case. The privy council has observed inter alia as follows: "if the document clearly shows a division of right its legal construction and effect cannot be controlled or altered by evidence of the subsequent conduct of parties." (emphasis is mine)

This proposition of law cannot be quibbled with. In the instant case the document (i.e., the release deed) did not demonstrate a clear division. Based on evidence, I have come to a contrary conclusion. Therefore, the judgment in my view does not advance the case of the contesting defendants.

56.7 Hatti (supra) the Supreme Court ruled, inter alia, that in view of the provisions of Section 154 and 185 of the DLR Act, a civil suit filed to challenge declaration of bhumidari rights in favour of the appellant before it, was not maintainable. As indicated by me hereinabove, these are not aspects which I am concerned with, because the gaon sabha not being a party to these proceedings, its stand is not known. Suffice it to note firstly, this court by order dated 24.12.1976 passed in Civil Revision No. 154/1969 dismissed the said revision petition based on a statement of the counsel for Union of India that they would treat judgment dated 07.06.1963 passed by Sh. K.S. Sidhu, the then senior Sub-Judge, as void; and secondly, the stand of the official respondents in CWP 376/1973 that the land in issue was owned by the writ petitioner nos. 1 to 7, i.e., the brothers along with their uncles.

57. In these circumstances my answers to the issues framed is as follows: ISSUE NO. 1

57.1 My answer to issue no. 1 is that the HUF was not disrupted in 1972-73 since parties continued in joint possession till even after September, 1981.

ISSUE NO. 2

57.2 My answer to issue no. 2 is that on land admeasuring 688 sq. yds. on which the business of M/s Capital Chemicals was carried on was within the fold of the HUF and hence, is amenable to a partition as prayed for by Gulab Singh in the 1983 suit. ISSUE NO. 3

57.3 The release deed was not legally operable and hence, would have to be discarded. The result would be that the properties, which are in the HUF fold, will have to be partitioned.

ISSUE NO. 4

57.4 Properties mentioned in paragraph 5(b) and (e) continue to belong to the HUF. As a matter of fact Gulab Singh along with his brothers and LRs of Hari Singh has jointly taken possession of a plot in Rohini allotted in their favour pursuant to award nos. 1231 and 1329 in respect of properties referred to in paragraph 2(e) and (f) of the 1983 suit. ISSUE NO. 5

57.5 In view of the fact that Issue no. 1 has been found in favour of Gulab Singh, the suit for partition is maintainable.

ISSUE NO. 6

57.6 In so far as this issue is concerned, the said issue was not pressed during the course of argument and hence, is found in favour of Gulab Singh. Therefore, no error can be found with the valuation, as affixed by the plaintiffs to the captioned suits. ISSUE NO. 7

57.7 The plaintiff is entitled to decree for rendition of accounts.

58. It is pertinent to note that before me no dispute as to the share of parties was raised. In the result, in view of my discussions above, Gulab Singh is entitled to a preliminary decree of partition to the extent of his 1/5th share in respect of properties detailed out in paragraphs 2(b) and 5 of the plaint filed in the 1983 suit. Consequently, Rajbir Singh, Ramesh Kumar, Mahesh Kumar along with LRs of Hari Singh shall have equal share, i.e., 1/5th each, in the said properties. For this purpose, by a separate order a court commissioner is appointed, who shall file a

report with regard to the mode and manner in which the properties can be partitioned. The Court Commissioner shall report as to the current state of the properties and the assets in question; this is more so, in case of Jaibabad property where it was sought to be argued that Mahesh Kumar and Ramesh Kumar have sold a portion of the property in their possession. Only to be noted that Ramesh Kumar has offered partition in respect of the said property as well. Accordingly, prayer (a) in suit No. 1099/1983 is decreed in favour of the plaintiff.

59. In so far as Suit no. 1138/1987 is concerned in view of the discussion above, the same is decreed in favour of the plaintiff. The lease deed dated 24.09.1984 is cancelled. The DDA is directed to execute a fresh lease deed qua Ashok Vihar property in the joint names of Gulab Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar, alongwith the LRs of Hari Singh.

60. In so far as suit No. 1989/1988 is concerned; in view of my discussions above, the same is dismissed.

61. Accordingly, decree be drawn up. Cost shall follow the results in the suits.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com