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**(2012) 12 DEL CK 0286**  
**In the Delhi High Court**  
**Case No : CS (OS) No. 572 of 1990**

Mohd. Iqbal and Others

APPELLANT

Vs

Mst. Najma and Others

RESPONDENT

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**Date of Decision :** 14-12-2012

**Acts Referred:**

Evidence Act, 1872 — Section 90

**Citation :** (2013) 2 AD 743

**Hon'ble Judges :** Manmohan Singh, J

**Bench :** Single Bench

**Advocate :** Aly Mirza, with Mr. Niloy Das Gupta, for the Appellant; S.D. Ansari, with Mr. I. Ahmed, for the Respondent

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## Judgement

Manmohan Singh, J.—The present suit has been filed by four plaintiffs seeking following relief's:

(a) A declaratory decree be passed in favour of the plaintiffs against the defendants to the effect that the plaintiffs and defendants No. 4 & 5 being the only legal heirs of the late Mohd. Ahmed are entitled to this estate;

(b) In the alternative, in case it is held by the Hon"ble Court that the defendants No. 1 to 3 are also the legal heirs of the late Mohd. Ahmed, then a declaratory decree be passed to the effect that the plaintiffs and the defendants being the legal heirs of Mohd. Ahmed deceased are entitled to succeed to his estate in the shares provided by Muslim Law as detailed in para 4 of the plaint above;

(c) A preliminary decree for rendition of accounts be passed in favour of the plaintiffs and against defendant No. 1 in respect of the assets of the deceased Mohd. Ahmed;

(d) A preliminary decree for partition of the assets and the immovable properties of Mohd. Ahmed be passed in favour of the plaintiffs against the defendants whereby the suit properties are ordered to be partitioned by metes and bounds or in such other manner as deemed appropriate in the circumstances of the case

and whereby the shares of the legal heirs of Mohd. Ahmed and that of plaintiff No. 2 as co-owner are physically separated.

(e) A decree for Rs. 45,000/- be passed in favour of plaintiff No. 2 against defendants No. 1 to 3 and 6 or such of them as may be found liable in respect of his half share of the rental income in the Wazirpur Industrial area property after the death of Mohd. Ahmed on 15.1.89;

(f) On a preliminary decree being passed for rendition of accounts and partition as prayed for, a Local Commissioner or Officer of the Court be appointed for obtaining accounts from defendant No. 1 and for reporting to the Court ways and means of effecting physical partition and separation of the shares of the parties or for recommending any other suitable mode of effecting the said partition;

(g) On such report being received, final decrees for rendition of accounts and partition be passed in favour of plaintiffs against the defendants;

(h) A decree for permanent prohibitory be passed in favour of the plaintiffs and against defendant Nos. 1 to 3 whereby they are restrained permanently from disposing of or wasting the assets of Mohd. Ahmed deceased;

(i) Any other relief deemed fit and proper in the circumstances of the case may also kindly be granted;

(j) Costs of the suit be awarded.

Plaint:

It is averred in the plaint that the plaintiffs and defendant Nos. 4 & 5 are the sons and daughters of Late Mohd. Ahmed (hereinafter referred to as the deceased) who died on 15th January, 1989. The wife of the deceased, Mst. Zubaidan had died on 16th November, 1981. Defendant No. 1 claims to be the second wife of the deceased. Defendants No. 2 and 3 are minor children born out of the said union of defendant No. 1 and the deceased. Defendant No. 6 is the tenant/occupant of the property No. A-96/10, Wazirpur Industrial Area, New Delhi which was owned by the deceased and plaintiff No. 2 each having 1/2 undivided share in the name of their erstwhile partnership concern, Labour Printing Press.

1.1 The deceased also had 1/3rd undivided share in the property a) bearing No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi and b) the remaining 2/3rd share being owned by brother of the deceased namely Mohd. Arif and the legal heirs of another deceased brother Zafar Ahmed.

1.2 The plaintiffs state that at the time of his death, the deceased had also left a substantial amount of moveable property including gold ornaments of his first wife Mst. Zubaidan weighing more than 60 tolas and other household items worth more than Rs. 5 lac. After the death of Mst. Zubaidan in 1981, their sons and daughters opposed the desire of Mohd. Ahmed to contract a second marriage as he was not maintaining good health.

1.3 It is the case of the plaintiffs that Mohd. Ahmed did not formally contract any such marriage, and no Nikah was performed. The defendant No. 1 was merely retained and employed for household work and it might be possible that he developed a liaison with her. Due to ill health, at the instigation of the person connected with the defendant No. 1, the deceased neglected the partnership business altogether and let out the Wazirpur Industrial Area property to the tenant i.e. defendant No. 6 who was paying rent of Rs. 7500/- and the defendant No. 1 started realizing rent/charges for which she was not entitled. The defendant No. 6 was called upon not to make the payment of rent exclusively to the defendant No. 1. Therefore, the suit for rendition of accounts is also filed by the plaintiffs.

1.4 It is alleged by the plaintiffs that on the death of Mohd. Ahmed, they and defendants No. 4 and 5 inherited his estate, both movable and immovable, in accordance with the Muslim Law of Inheritance. Plaintiffs No. 1 and 2 as sons are entitled to 1/4th share each in the estate. In case, however, it is held by the Court that defendant No. 1 was the lawfully wedded wife of deceased Mohd. Ahmed and defendants No. 2 and 3 are their children, then the entire estate of Mohd. Ahmed would devolve in the following manner:

1.5 It is stated in the plaint that as defendant No. 1 threatened to sell and part with the possession of the two properties, plaintiffs No. 1 and 2 filed a suit for injunction being Suit No. 125 of 1989 titled as Mohd. Iqbal and another (who are plaintiff No. 1 and 2 in present case) vs. Mst. Najma and 4 others, in the Court of Mrs. Urmila Rani, Senior Sub-Judge Ist Class at Delhi. The said suit was withdrawn by plaintiffs No. 1 and 2 with permission to file a fresh suit on the same cause of action by order dated 21st November, 1989 on certain terms and conditions. It is alleged that in the said suit defendant No. 1 for the first time came out with the plea that she was the lawfully wedded wife of Late Mohd. Ahmed "the deceased" and defendants No. 2 and 3 are their children. Late Mohd. Ahmed had executed his last Will and testament either in her favour or in favour of their children and by virtue of the said Will, his entire estate including the entire Wazirpur Industrial Area property, was bequeathed to her or her children and they became exclusive owners of deceased's estate. She denied the rights of plaintiff No. 2 as co-owner of 1/2 undivided share in the Wazirpur Industrial Area property as plaintiff No. 2 had relinquished his rights therein which is a registered document.

1.6 During the course of arguments, learned counsel for the plaintiffs submitted that the plaintiffs are claiming partition, rendition of accounts, recovery and injunction etc. in respect of the estate of their father seeking inter alia the following prayers:

(A) 1/3rd undivided share in property No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi; and

(B) Share as co-lessee in leasehold property No. A-96/10, Wazirpur Industrial

Area, Delhi, admeasuring 457.80 sq. yards with the Plaintiff No. 2 being the other co-lessee.

Written Statement by defendant No. 1:

2. The written statement has been filed by the defendant Nos. 1 to 3. It is stated in the written statement that the suit has not been properly valued for the purposes of Court Fee and jurisdiction. The plaintiffs have no locus standi to file the present suit as they have nothing to do with the suit property. Plaint does not disclose any cause of action. The plaintiffs have not come to the Court with clean hands as the plaintiffs are guilty of suppressing the material facts and the present suit has been filed by the plaintiffs with mala fide intentions to harass the defendant Nos. 1 to 3. In the written statement, it is specifically stated that defendant No. 1 was the legally wedded wife of the deceased and is now his widow. The defendant Nos. 2 and 3 are daughter and son of the deceased from the defendant No. 1 who married the deceased on 20th January, 1982 in accordance with the Muslim Rites at a Dower of Rs. 10000/-. They resided together at 7649, Quresh Nagar, Delhi.

2.1 The plaintiffs did not join the funeral of the deceased who in his lifetime had also been receiving beatings at the hands of the plaintiffs. The deceased also lodged various complaints with the local Police Station in this regard. It was admitted by defendant Nos. 1 to 3 that the deceased had 1/3rd share in the property No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Delhi. However, as regard property No. A-96/10, Wazirpur Industrial Area, Delhi, it was denied that the plaintiff No. 2 was the co-owner of the suit property or the plaintiff No. 2 obtained lease of said property along with the deceased or they both constructed the property.

2.2 As per the defendants, the deceased was the exclusive owner of the said property as some disputes and differences arose between them, the said partnership had been dissolved and the matter was referred to the arbitration of Haji Riazuddin, Mohd. Akhlaq and Zafar Ahmed on 20th January, 1983 who had announced their award on 21st January, 1983 whereby premises No. 7122/XIV situated at Ghas Mandi, Pahari Dhiraj Delhi, had been given to the plaintiff No. 2 and in turn, the plaintiff No. 2 had surrendered all his rights, title and interest in the plot No. 96/10, situated in Wazirpur Industrial Area, Delhi, measuring 460 sq. yards, along with the property No. 7649, Quresh Nagar, Gali Darogawali, Delhi, which came to the share of the deceased. The said award was acted upon by the parties and became final.

2.3 The plaintiff No. 2 relinquished his rights in respect of plot No. 96/10 by means of a relinquishment deed dated 19th April, 1983 which was duly registered in the office of the Sub-Registrar, Delhi. Thus, the plaintiffs are estopped from raising any claims in the estate of the deceased. It is the deceased who had invested from his own income and jewellery of defendant No. 1 and raised the construction over the said property in Wazirpur Industrial Area,

Delhi. The deceased had been in possession of the said property and he was receiving the rental income of the portions of the said property which had been let to the defendant No. 6.

2.4 It was denied that he left any gold ornaments belonging to Mst. Zubaidan as alleged in the plaint. Therefore, the question of inheritance of the estate of the deceased by the plaintiffs or any of the children of the deceased does not arise as he was the absolute owner of the said property and was rightly competent to deal with or dispose of the said property. By virtue of Will dated 10th February, 1987, duly registered before the Sub-Registrar, Delhi, he bequeathed all his estate in favour of defendant No. 1 excluding the plaintiffs and other children from his first wife as he had provided substantially in his life time to his children.

2.5 Since he had not paid Mehar to the defendant No. 1, he also provided for the same by way of handing over all the estate and assets by giving and gifting the same in lieu of Mehar to the defendant No. 1 during his life time. Not only that, he had also executed a general power of attorney in favour of defendant No. 1, giving her all the rights to manage and control the affairs of the entire holding of the deceased and the defendant No. 1 had been rightly acting even earlier on behalf of the deceased even during his life time and subsequently after his death.

2.6 It is alleged in the written statement that he was hale and hearty at the time of second marriage. His death was caused due to bad behaviour of the plaintiffs towards him. It is denied by defendant No. 1 that no Nikah was performed. She is the lawfully wedded wife of the deceased and they were married on 20th January, 1982 in accordance with the Muslim rites.

Issues:

3. From the pleadings, the following issues were framed by this Court on 21st February, 2005:

1. Whether the suit is not properly valued for purposes of Court fee and jurisdiction? OPD
2. Whether defendant No. 1 is not the legally lawfully wedded wife of Mohd. Ahmed and defendants No. 2 and 3 are not born out of any such wedlock? OPP
3. Whether the plaintiffs No. 1 and 2 had executed Relinquishment Deed dated 19.04.1983 in favour of Mohd. Ahmed and if so, to what effect? OPD
4. Whether the suit property was left behind by late Mohd. Ahmed? OPP
5. Whether defendant No. 1 is liable to render accounts of the income of the estate of Mohd. Ahmed? OPP
6. Whether disputes between the parties were referred to a Panch/Arbitrator for adjudication. If so, whether the decision rendered by the Panch/Arbitrator is binding upon the parties?
7. To what relief's are the parties entitled to?

4. The plaintiffs examined five witnesses PW-1 Musarrat Hussain, PW-2 Mohd. Akhlaq, PW-3 Mohd. Iqbal, PW-4 Naresh Kumar Parasar and PW-5 Raj Kumar. The plaintiffs have also filed the affidavits in evidence of PW-1 which is exhibited as Ex. PW-1/A, affidavit of PW-2 is exhibited as Ex. PW-2/A and affidavit of PW-3 is exhibited as Ex. PW-3/A. The defendant No. 1 has examined one witness namely Mohd. Saeed, DW-1 who is the power of attorney holder of defendant No. 1. His affidavit is exhibited as Ex.DW-1/A.

5. The plaintiffs have not filed any original document. However, the defendants have filed the documents from time to time i.e. on 24th October, 1990, 23rd April, 1991, 5th May, 2005, 28th April, 2006 and 13th July, 2006. The plaintiffs have admitted certain documents at the time of admission/denial of the documents as well as at the stage of evidence. The details of the exhibited documents are given as under:

1. Ex. PW-1/D-3 (Certified copy of the relinquishment deed dated 19th April, 1983).

2. Ex. PW2/D-2 (Agreement for appointment of arbitrators dated 20th January, 1983).

3. Ex. PW-2/D-1 (Arbitration Award dated 21st January, 1983).

4. Ex.DW-1/7 (Iqrarnama Babat Adaigi Meher dated 25th May, 1988).

5. Ex.DW-1/6 (General Power of Attorney executed by deceased in favour of defendant No. 1 dated 6th June, 1988).

6. Ex.DW-2/D4 (hand-written Will by the deceased dated 25th April, 1984).

7. Ex.DW-2/DA (certified copy of the registered Will of deceased dated 10th February, 1987).

8. Ex. PW-2/D2 (Photograph of the deceased).

9. Ex.DW-1/2/Mark A/Ex.DW-1/D1 (Nikahnama).

10. Ex.DW-1/9/Ex. PW-2/D1/Mark B (Invitation Card of marriage)

11. Ex.DW-1/10/Ex. PW-2/D1/Mark C (Copy of order passed by Urmila Rani, Sub-Judge dated 21st November, 1989).

12. Ex.DW-1/11/Ex.D-1/Mark D (Ration Card).

13. Mark E (Copy of the complaint recorded as DD No. 16A dated 29th April, 1982)

6. DW-1 in his affidavit exhibited the documents i.e. Ex.DW-1/2 (Nikahnama), Ex.DW-1/9 (Invitation Card), Ex.DW-1/10 (Copy of the order passed by Urmila Rani, Sub-Judge on 21.11.1989), Ex.DW-1/11 (Ration Card) & Ex.DW-1/12 (Complaint recorded as DD No. 16A dated 29th April, 1982) which were de-exhibited and were marked as Mark A to E respectively. The document i.e.

DW-1/2 (Nikahnama) was re-exhibited as Ex.DW-1/D1 in cross-examination. It has been noticed from the orders passed by the Joint Registrar as well as pleadings of the parties that various documents have been exhibited twice. Some documents are exhibited before the Joint Registrar. It was pointed out to the learned counsel for the defendant Nos. 1 to 3. However, the same was not clarified by him. He was also seeking time to file the written submissions, the same was also filed. Therefore, it took time to pronounce the judgment in the matter for awaiting about the clarification on documents and written-submissions.

#### ISSUE NO. 1:

7. Burden to prove this issue was upon defendants No. 1 to 3. No evidence has been led by the defendants on this issue. Although it was stated in the written statement that the plaintiffs were not in possession of either of the suit properties and the plaintiffs had to pay ad-valorem Court Fee for seeking partition and possession. Learned counsel for the plaintiffs has referred to two decisions i.e. Chief Inspector of Stamps Vs. Indu Prabha Vachaspati (Smt) and Others, and Dr. Durga Parmar and Others Vs. V.K. Verma and Others, , wherein it was held that if a property is in possession of a tenant, then it is enough to conclude that the members of the family are in joint constructive possession. It is argued by the plaintiffs' counsel that there is specific statement made in the plaint, as no evidence is led, the plaintiffs undertake to pay the ad-valorem Court Fee if, ultimately decree is passed in favour of the plaintiffs.

The undertaking given by the plaintiffs' counsel is accepted. If situation arises, necessary orders in law for paying the ad-valorem Court Fee would be passed.

#### ISSUE NO. 2:

8. The burden of proving the said issue has been put on the plaintiffs. The plaintiffs No. 1 and 2 who appeared as PW-2 and PW-3 in their testimony deposed that after the death of Mst. Zubaidan in 1981, the children of the deceased opposed his desire to contract a second marriage as he was not maintaining the good health. The deceased did not formally contract any such marriage and always represented to his relations that no Nikah was performed. The defendant No. 1 was only retained and employed for household work and it might be possible that he developed a liaison with her. However, it is not denied by them that defendants No. 2 & 3 are the children of late Mohd. Ahmed with defendant No. 1. It is argued by the learned counsel for the plaintiffs that as the defendant No. 1 herself did not enter into the witness box to identify her Nikahnama which was sought to be proved by the attorney of the defendant No. 1, the same has no evidence value in the eyes of law. Even original Nikahnama was not produced and the same has also not been proved in secondary evidence. The age mentioned in the affidavit of DW-1 and appearing in the Nikahnama is inconsistent. The dower mentioned in the Nikahnama of Rs. 10,000/- was to be paid at the time of Nikah. The execution of an Iqarnama by the deceased subsequently in lieu of Mehar thereby gifting his properties to the defendant No.

1 is contrary to the law. Thus, the plaintiffs have discharged their burden on issue No. 2.

DW-1 deposed that defendant No. 1 is his real sister, the defendants No. 2 and 3 are his Bhanji and Bhanja. Mst. Nazma, defendant No. 1 and the deceased were married on 20th January, 1982 in accordance with Muslim rites and custom at a dower of Rs. 10,000/-. He is the attorney of defendant No. 1. He has also identified his signatures. The power of attorney is marked as Ex.DW-1/1. He deposed that the Nikahnama was executed as per Muslim Law and the customs and the same is exhibited as Ex.DW-1/D1 in his cross-examination. Certified copy of the will Ex. PW-2/DA and original Iqrarnama, Ex.DW-1/7 are perused wherein it is mentioned that late Mohd. Ahmed has married twice. Similarly, in the Iqrarnama Ex.DW-1/7, a specific statement has been made by the deceased that defendant No. 1 is his second wife and he had to pay Rs. 10,000/- as Mehar to her. Burden to prove issue No. 2 is upon the plaintiffs. The plaintiffs in their testimony have not challenged the signatures of the deceased. There were three witnesses to the marriage. Not a single witness was summoned by the plaintiffs to prove that the marriage was not solemnized or she is not wife of the deceased. It is also not proved by the plaintiffs that the copy of Nikahnama filed by the defendants is forged and fabricated, rather PW-2 and PW-3 who are the sons of the deceased in their statements have stated that they started living separately when their father brought defendant No. 1, as earlier they were living together. In their testimonies, it was also stated that they opposed the marriage of their father with defendant No. 1. In the cross-examination of DW-1, the copy of Nikahnama was exhibited as Ex.DW-1/D1. The defendant No. 1 also produced copy of the ration card (Mark D) of the deceased in which the name of defendant No. 1 is mentioned as his wife. DW-1 deposed that the Nikah was performed in his presence. He was not crossed on this aspect. Therefore, it is proved beyond any doubt that the defendant No. 1 is the lawfully wedded wife of the deceased. As far as defendants No. 2 and 3 are concerned, the plaintiffs have not denied the fact that they are born from the deceased and defendant No. 1. The plaintiffs were not able to demolish the statement of DW-1 in his cross-examination who had also stated that the rishta of marriage came through one Sh. Badru.

In the cross-examination, DW-1 has stated that defendant No. 1 is suffering from various ailments and thus unable to move without any support, hence, she executed the Power of Attorney in his favour to depose on her behalf. He admitted that she is about 62-63 years old. The Nikahnama contains the Mehar which was fixed at Rs. 10,000/-. Mehar was not paid at the time of Nikah. Plot No. A-96/10, Wazirpur Industrial Area in lieu of Mehar was transferred in the name of defendant No. 1. Plaintiffs under these circumstances have failed to prove their burden on issue No. 2, hence, the same is decided in favour of defendants No. 1 to 3 and against the plaintiffs.

ISSUES NO. 3, 4 & 6:

9. Issues No. 3, 4 & 6 are inter-linked with each other, therefore, these issues

are being decided together. The plaintiffs examined five witnesses, namely, PW-1 Musarrat Hussain, PW-2 Mohd. Akhlaq, PW-3 Mohd. Iqbal, PW-4 Naresh Kumar Parasar and PW-5 Raj Kumar. As regards the testimonies of PW-1 to PW-3, they almost reiterated the statements made in the plaint.

#### Evidence of the Plaintiffs:

10. PW-1 Mussarat Hussain who is the brother-in-law of plaintiffs No. 1 & 2 and son-in-law of the deceased has tendered his examination-in-chief by way of his affidavit dated 26th July, 2005 who is not a party to the suit. He has stated that it is not correct that plaintiff No. 2 had given up his right by way of relinquishment deed dated 19th April, 1983 Ex. PW-1/3. It is denied by him that the deceased Mohd. Ahmed became owner of the entire property. He also deposed that after the death of the deceased the suit property is inherited by all his legal heirs and the same is to be divided between them by virtue of law of inheritance. Rest of his statement is almost similar to the statement made in the plaint.

In his cross-examination, he stated that at the time of the death of Zubaidan Begum, the plaintiffs were about 25-30 years of age. The plaintiffs No. 3 & 4 were married and residing separately in their own houses. Plaintiff No. 1 was in service at that time and plaintiff No. 2 was assisting his father in his business. He admitted that defendant No. 1 started residing with the deceased after the demise of his first wife Smt. Zubaidan Begum and both were residing in the property No. 7649, Quresh Nagar, Sadar Bazar, Delhi. Plaintiffs No. 1 & 2 were also residing with them. They started living separately when their father brought defendant No. 1. He admitted that a dispute between the plaintiffs and the deceased arose and thereafter the matter was referred to the Biradari people and was settled by the said Biradari. However, it was denied by him that in consequence thereto, the Printing Press came to the share of the plaintiffs besides other things. He was not aware when the construction work of the said Wazirpur plot was carried out and when the tenants were inducted thereon. He denied that after the settlement, late Mohd. Ahmed became the absolute owner of the plot of Wazirpur Industrial Area.

11. PW-2 Mohd. Akhlaq Qureshi is plaintiff No. 2 who tendered his examination-in-chief by way of affidavit dated 26th July, 2005. It was stated by him that the plot of land of property No. A-96/10, Wazirpur Industrial Area, Delhi was obtained on leasehold basis from the DDA by his father Mohd. Ahmed and himself as allottees. Plaintiff No. 1 has nothing to do with the allotment of the leased plot. Plaintiff No. 1 was also not a partner in the firm Labour Printing Press. The construction was made by both i.e. by him and his father. It is denied by him that he had given up his rights in the allotted property. He further stated that no follow up action was taken with DDA as was compulsory in respect of joint allotment and thus, at the time of the death of the deceased in 1989 the leasehold rights in the property subsisted in the names of both the said parties i.e. himself and his father. And in any case, if the allegations of defendants No. 1

to 3 are taken as correct, his inheritance as a legal heir on the death of Mohd. Ahmed cannot be taken away under the Muslim law of inheritance in which all the legal heirs of the deceased are entitled to their shares. He states that part of property No. A-96/10, Wazirpur Industrial Area, Delhi is in the tenancy/occupation of defendant No. 6 for which he was paying Rs. 7500/- per month and not Rs. 4500/- as alleged by defendant No. 1. She is now realizing more than Rs. 20,000/- per month from the tenant apart from retaining portion of the property. Thus, she is liable to render the accounts.

In cross-examination, he again reiterated that plaintiff No. 1 has nothing to do with the plot No. A-96/10, Wazirpur Industrial Area, Delhi. The said plot was in the name of Labour Printing Press and he and his father were equal partners in the said business. He admitted that the disputes in respect of the suit properties were discussed before his uncle namely Late Sh. Zafar Ahmad. He did not remember as to whether Mr. Riaz Uddin as well as Mohd. Aklakh were present at that time or not. However, he admitted his signatures at points A & B on the Award dated 21st January, 1983 (Ex. PW-2/D-1). He has admitted his signatures at points A, B & C on the certified copy of the document Ex. PW-1/D-3 i.e. the registered relinquishment deed dated 19th April, 1983. He submitted that he cannot identify the signatures of his father on the agreement for appointment of Arbitrators (Ex. PW-2/D-2). It was admitted by him that in order to resolve the dispute between him and his father, his uncle had got prepared all these documents with the understanding that the same would be kept in his custody. He has also been seeking the writing of his father on Ex. PW-2/D-4 as well as the signatures of his father on the Will dated 25th April, 1984 at Mark A with the handwriting of the deceased. With regard to the subsequent Will, he did not admit the signatures at points A, B & C on the certified copy of the registered Will dated 10th February, 1987, he stated that the same does not look like the signatures of his father. He was shown the complaints made by his father vide DD No. 16A dated 29th April, 1982 (Mark E), he pleaded his ignorance if any police complaint was made by his father against the plaintiffs, which contained allegations that his father was beaten up by plaintiffs No. 1 & 2. He was also not sure about any complaint made against him by defendant No. 1. He was shown the invitation card Ex. PW-2/D-1 of his marriage which was solemnized on 15th July, 1987 in which the name of his father was not printed, he stated that it was got printed by his uncle, therefore, he cannot make any comment. He admitted that his uncle's name is mentioned in the invitation card. He admitted that his father did not participate in his marriage nor has he invited his father in the same, as it was the duty of his uncle and his family to invite him. He was not sure as to whether any invitation card of his marriage was given to his father.

In the cross-examination recorded on 21st May, 2008, he stated that he had no knowledge who had intimated about the death of his father to the MCD and who made the payments to the caretakers of the kabristan for burial expenses of his father. He identified the photograph shown to him which is Ex. PW-2/D-2. He denied that the photograph of his father is of the same day on which his

marriage had taken place. He admitted that he had not seen his father after that day. He also admitted in the cross-examination that Mohd. Sayeed (DW-1) belongs to the same Biradari and is the brother of defendant No. 1 and two children i.e. one daughter and one son were born from his father and defendant No. 1. He admitted that after the settlement, the premises along with the machineries situated in 7122, Gali Telian, Pahari Dheeraj, Delhi-110006 came in his share and he started running business in the said premises. According to him, it was only a temporary settlement and the said premises is still in his possession. He did not remember the name of the Architect, who constructed the Printing Press premises at Wazirpur plot which was started in 1977-78, nor he remembered the address of the Architect. Similar is the position about his rough location where he used reside or had his office. Similar is also the position of the Civil Engineer. He also did not remember as to which documents were annexed to the application for sanction of building construction plan. He also did not remember the name of the Contractor. He stated that he had no knowledge about the fact as to how much area was got constructed from which of the Contractors as well as about the total covered area. He was also not aware of how much payment was made by his father and who got it constructed subsequently. He admitted that he had not filed income tax return in the Court and cannot produce the same or any document in Court to show that any money was spent towards the construction of the factory. He did not know after how much time of making construction, the said premises was let out. He admitted that after the death of his father, defendant No. 1 was taking the rent. He admitted that the parties entered into an agreement delegating powers to Panchayat to resolve the disputes. However, he answered that it was family panchayat and it was just to avoid conflict and a temporary truce was made. He also admitted that the family panchayat had given decision which is Ex. PW-2/D-1 which bears his signatures. He also admitted the signatures of his father on the document Ex. PW-2/D-1. He also admitted the execution of the relinquishment deed Ex. PW-1/D-3 which bears his signatures. He also identified the signatures of his father at points B & C on mark B which is now marked as Ex. PW-2/DA i.e. Will dated 10th February, 1987. He admitted that initially, the Labour Printing Press was the proprietary concern in which his father was the sole proprietor who has also obtained the MCD licence (Ex. PW-2/DB) of the suit property. Later on, his father made him a 50% partner in the firm and thereafter, the said licence was issued in the name of the firm. He admitted that when the premises was let out, his father was receiving the rent and after his death, defendant No. 1 started collecting the rent from the tenant.

12. PW-3 Mohd. Iqbal who is plaintiff No. 1 in the suit filed his affidavit dated 26th July, 2005 in his examination-in-chief. The statement made in the affidavit is almost the same as made by PW-1 and PW-2 as well as in the plaint. In the cross-examination, he also admitted that defendant No. 1 belongs to their Biradari and they are residing in the same locality. He was unaware whether his father had married defendant No. 1 or not, as the marriage did not take place in

his presence. However, it was admitted by him that he opposed when his father brought defendant No. 1 home. He identified the signatures of his father on Ex. PW-2/D-1, Ex. PW-2/D-2, Ex. PW-1/D-3 as well as on Ex. PW-1/D-4. In the cross-examination, he admitted that he had no documentary evidence to show that his mother had 60 tolas of jewellery and valuable items worth Rs. 5 lacs. He also admitted that the Printing Press located at Kasabpura is in the custody of his brother Mohd. Akhlak, plaintiff No. 2. Municipal number of the said Printing Press is 7122, Ghass Mandi, Pahari Dheeraj, Delhi and both himself and plaintiff No. 2 were living jointly since 1983 when they separated from their father.

13. PW-4 Naresh Kumar Parasar was examined in Court on 13th January, 2010 who had brought the summoned record i.e. relinquishment deed dated 19th April, 1983. The said document was duly registered with the Sub Registrar, Delhi. It was confirmed by him that the said certified copy was issued by their office, which is already exhibited as Ex. PW-1/D-3.

14. PW-5 Raj Kumar s/o. Sh. Brahma Das, UDC from DDA, Industrial Branch, Delhi was examined in Court on 13th January, 2010. He had also brought the summoned record pertaining to plot No. 96/10, Block A, Wazirpur Industrial Area, Delhi. It was stated by him that the said plot was allotted for a perpetual lease deed dated 11th April, 1977 to M/s. Labour Printing Press, R/o. 7649, Street Munshi Abdul Rehman, Quresh Nagar, Sadar Bazar, Delhi. He has compared the photocopy from the Court record which is the same as the office copy available. It was a registered perpetual lease deed which is marked as Ex. PW-5/1. As per the DDA record, the property is not mutated till date. However, on 27th February, 2001 defendant No. 1 applied for mutation but the same is not mutated. In the cross-examination, he admitted that as per the office note dated 28th May, 1997 the mutation in the name of Smt. Najma Begam had been kept pending till the decision of the suit. He also stated that it is correct that certified copy of the perpetual lease deed which was registered before the Sub Registrar, Delhi is not on the record, brought by him on that day.

Evidence of Defendant No. 1:

15. Defendant No. 1 examined only one witness i.e. Mohd. Saeed who appeared as DW-1 and tendered on record his affidavit dated 9th July, 2010 in examination-in-chief and the same is exhibited as Ex.DW-1/A. He is the brother of defendant No. 1 and is the constituted attorney of defendant No. 1. The deed of power of attorney dated 29th June, 2010 executed by defendant No. 1 in his favour and duly attested by the Notary Public is on record and the same is exhibited as Ex.DW-1/1. He confirmed in his testimony that his sister Smt. Najma was married to the deceased according to Muslim rites and customs. Nikahnama was executed as per the Muslim law and custom and the same is exhibited as Ex.DW-1/D1/Mark A/Ex.DW-1/2. She is the lawful wedded wife of the deceased. They married on 20th January, 1982 at a dower of Rs. 10,000/- and they were residing together at 7649, Quresh Nagar, Delhi.

He further stated that the deceased was the exclusive owner of the property at Wazirpur Industrial Area. Most of the averments made in the affidavit are similar as made in the written statement. He admitted certain documents i.e. the award passed by the Arbitrator as Ex. PW-2/D-1, the Relinquishment Deed dated 19th April, 1983 executed by the plaintiffs in respect of the property at Wazirpur Industrial Area which was duly registered in the office of Sub Registrar, Delhi, as Ex. PW-1/D-3, the Will dated 10th February, 1987 executed by the deceased as Ex.DW-2/DA, the General Power of Attorney executed by the deceased in favour of defendant No. 1 as Ex.DW-1/6, the agreement for Mehar executed by the deceased exhibited as Ex.DW-1/7, the reference of dispute to the Arbitrator by an agreement exhibited as Ex. PW-2/D-2, the invitation card of the marriage of plaintiff No. 2 exhibited as Ex.DW-1/9/Ex. PW-2/D1/Mark B, the order dated 21st November, 1989 passed by a Sub Judge, Delhi in a suit filed by the plaintiffs No. 1 & 2 for injunction, Mark C, copy of the ration card in order to show that the deceased and defendant No. 1 were residing as husband and wife, Mark D, and the copy of the complaint duly recorded by the police as DD No. 16A dated 29th April, 1982, Mark E. It is stated by him that late Mohd. Ahmed was the absolute owner of the Wazirpur property and he had duly executed a Will dated 10th February, 1987 which was duly registered before the Sub Registrar, Delhi bequeathing all his estate in favour of defendant No. 1 excluding and debarring the other children from his first wife and their inheritance from his estate, as he had already provided substantial to them. He further stated that after the date of relinquishment deed Ex. PW-1/D-3, award and the follow up actions, the deceased had disposed of the properties and jewellery of defendant No. 1 and had raised the construction over the property in Wazirpur Industrial Area, Delhi. The deceased was in possession of the said property and had also been receiving the rental income of portions of the said property which had been let out to other parties i.e. defendant No. 6. The main cause of the death of the deceased was the bad behavior of the plaintiffs otherwise he was hale and hearty. He further stated that the plaintiffs had assaulted his sister i.e. defendant No. 1 as well as their father on various occasions.

Plot No. 96/10, Wazirpur Industrial Area, Delhi

16. It is the admitted case of parties that there were differences and disputes arose between the deceased and plaintiff No. 2 Mohd. Akhlaq, due to which the partnership was dissolved and the matter was referred to the arbitration of Haji Riazuddin son of Sh. Mohd. Yusuf, Ikhlq son of Mohd. Yusuf and Zafar Ahmad son of Hafiz Mohd. Ibrahim vide agreement for appointment of arbitrators (Ex. PW-2/D2) dated 20th January, 1983 who pronounced their award (Ex. PW-2/D1) whereby premises No. 7122/XIV situated at Ghas Mandi, Pahari Dhiraj Delhi, had been given to the plaintiff No. 2 and in turn, the plaintiff No. 2 had surrendered all his rights, title and interest in the plot No. 96/10, situated in Wazirpur Industrial Area, Delhi, measuring 460 sq. yards, along with the property No. 7649, Quresh Nagar, Gali Darogawali, Delhi, which came to the share of the deceased. The said award was acted upon by the parties and became final. The

plaintiff No. 2 is admittedly in possession of the said property. The said fact is also confirmed by plaintiff No. 1 in his testimony. The Award was also not challenged by any of the plaintiffs. The plaintiff No. 2 in lieu of the said settlement relinquished his rights in respect of plot No. 96/10 by means of relinquishment deed dated 19th April, 1983 Ex. PW-1/D-3 which was duly registered in the office of the Sub-Registrar, Delhi.

17. Extracts of the Award dated 19th January, 1983 (Ex. PW-2/D-1) read as under:-

We, Haji Riazuddin son of Shri Mohd. Yusuf, resident of 6375/13, Gali Ishwar Parshad, Bara Hindu Rao, Delhi, Mohd. Ikhlaq son of Mohd. Yusuf, resident of 3580, Gali Thelewali, Bara Hindu Rao, Delhi, Zafar Ahmad s/o. Hafiz Mohd. Ibrahim, r/o. 7649/14 Gali Daroge Wali, Qasabpura, Delh, (Panchs) (Arbitrators) aforesaid. S/Shri Mohd. Ahmad s/o. Hafiz Mohd. Ibrahim Party No. 1, Ikhlaq Ahmad s/o. Shri Mohd. Ahmad, party No. 2, residents of 7649/14, Gali Daroga Wali, Delhi, vide their agreement of appointment of arbitrator, dated 20 January, 1983, we are appointed as Arbitrator.

Whereas we the Arbitrators (Panchs) have been appointed to resolve the dispute of Labour Printing Press, 7122/14, Mandi Ghas, Pahari Dhiraj. We have heard/taken the statement of both the parties and we announced/give our decision in the presence of both the parties, and the same has been explained to them and both the parties in their sound disposing mind have understood the same admit the same to be correct of their own accord, and have accepted the Award and have put their signatures in token of its correctness on the Award.

The Award is as under:

1. That the entire plot No. 96/10, measuring 460 sq. yards, situated at Wazirpur Industrial Area, Delhi, alongwith goodwill of Labour Printing press and a Lathe machine, telephone No. 518234 and a sum of Rs. 15000/- in cash have been given to the party No. 1, and the remaining entire printing press alongwith business place No. 7122/14, as his share, according to Muslim Law, has been given to party No. 2 and Iqbal Ahmad, and till today, the debt and assets of the Firm, and liabilities of the Market and Authorities, Income tax etc. and the amount due to Chit Fund Company of Rs. 6200/- shall be payable by the second party. Hereafter, the second party and Iqbal Ahmad will not have any concern or claim to entire property of the first party, i.e. moveable and immovable.

Therefore, these terms of decision have been subscribed, so that it may become the proof and may be used in the time of need. This Deed has been ascribed on 21 Jan. 1983 (Friday) in the hand-writing of Shri Hem Chander Saxena-Deed Writer No. 35, License No. 5.

Shri Ikhlaq Ahmad party No. 2

Sd/- in English

Mohd. Ahmad party No. 1

Sd/- in English

Sh. Iqbal Ahmad

Sd/- in English

Haji Riazuddin Mukir Sehikh Haji Riazuddin Thumb

Impression

Mohd. Ikhlaq Arbitrator

Sd/- in English

Mohd. Ikhlaq 21.1.83 Thumb mark.

Shri Zafar Ahmad Arbitrator

Sd/- in Urdu, and thumb impression.

18. PW-2 Mohd. Akhlaq, plaintiff No. 2 who tendered his examination-in-chief by way of affidavit dated 26th July, 2005 had in his testimony stated that plaintiff No. 1 has nothing to do with the allotment of the leased plot as he was not a partner in the firm M/s. Labour Printing Press. The plaintiffs, on the other hand, have stated alternatively that in case, it is held that the defendant No. 1 was the lawfully wedded wife of late Mohd. Ahmed and defendants No. 2 & 3 are their children, the estate of the deceased would devolve in all the legal heirs in accordance with the Muslim Law of Inheritance. The plaintiffs No. 1, 3 & 4 had not pleaded that they were at any point of time partners or shareholder of the Wazirpur property.

19. In view of the above, it is proved beyond any doubt that the plaintiff No. 2 had relinquished all his rights and titles pertaining to the said plot in favour of his father. As regards the construction on the plot, the plaintiff No. 2 totally failed to prove in evidence that he had spent any amount on construction, as in his cross-examination the defendant No. 1 was able to demolish all his claims. Thus, his claim is rejected and it is held that after relinquishment, the deceased Mohd. Ahmed became the exclusive and sole owner of the plot at Wazirpur Industrial Area along with the goodwill of the firm M/s. Labour Printing Press. The plaintiffs had not denied that the share of the Printing Press along with business place No. 7122/XIV came to the share of plaintiff No. 2 and the same is still in his possession. This also fortified the statement made by the learned counsel for the plaintiffs during the hearing of the case as the relief of partition pertaining to above mentioned property which came to the share of plaintiff No. 2 was given up.

20. Now, it is to be considered, whether after the death of Late Mohd. Ahmed, his legal heirs are entitled to inherit his estate pertaining to the said plot in accordance with the Muslim Law of Inheritance. The said claim of the plaintiffs

and defendant Nos. 4 and 5 is denied by defendant No. 1.

21. In order to prove her case, defendant No. 1 produced on record the following documents:-

(a) Original Will dated 25th April, 1984 written by the deceased in his own handwriting as Ex.DW-2/D4.

(b) Certified copy of the Will dated 10th February, 1987 as Ex.DW-2/DA.

(c) Agreement for payment of Mehar dated 25th May, 1988 as Ex.DW-1/7.

22. Will dated 25th April, 1984 (Ex. PW-2/D4) & Will dated 10th February, 1987 (Ex.DW-2/DA)

The defendant No. 1 had filed the original Will dated 25th April, 1984 which is proved as Ex. PW-2/D4 signed by the deceased. It is claimed that it is in the handwriting of the deceased himself.

The defendant No. 1 also filed certified copy of second Will dated 10th February, 1987 which is proved as Ex.DW-2/DA which is attested by two witnesses, namely Sirajuddin and Mohd. Saeed who is the brother of defendant No. 1 and her constituted attorney and deposed as DW-1 on behalf of defendant No. 1. In both the Wills Ex. PW-2/D4 and Ex.DW-2/DA, the deceased bequeathed all his movable and immovable properties in favour of his second wife Smt. Nazma Begum, defendant No. 1. The details of the immovable properties are given as Plot No. A-96/10 (460 Sq. Yards) situated at Wazirpur Industrial Area, Delhi as well as 1/3rd share of the deceased in his ancestral land bearing No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi. In his last Will Ex.DW-2/DA, he declared that he married twice; his first wife died leaving behind two sons i.e. plaintiff No. 1 and plaintiff No. 2; they have taken their shares from all his movable and immovable properties and are living separately from him and have no concern whatsoever. All the four daughters from the first wife are married and happily living and he did not want to give them anything more from his remaining movable and immovable properties.

23. Both the Wills are proved by DW-1 in his deposition who also stated in his evidence that all the children of the deceased from his first wife had been excluded and debarred from claiming any inheritance from the estate of the deceased, as when he was alive, he provided for his children substantially and to the best of his available means and capacities. As the deceased had not paid any mehar to the defendant No. 1, he had provided for the same by giving assets in lieu of mehar to defendant No. 1.

24. Under Muslim Law, bequest in excess of 1/3rd of estate cannot take effect unless such bequest is consented to by heirs after the death of testator. In the present case, as per the last Will the bequest was more than 1/3rd of the estate of the deceased in favour of defendant No. 1 with regard to two properties i.e. Plot No. A-96/10 (460 Sq. Yards) situated at Wazirpur Industrial Area, Delhi as

well as 1/3rd share of the deceased in his ancestral land bearing No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi.

25. Though after the last Will, the deceased had also executed agreement for payment of mehar by which in lieu of mehar which was paid at the time of marriage, the deceased gave the ownership right of the immovable property i.e. Plot No. A-96/10 (460 Sq. Yards) situated at Wazirpur Industrial Area, Delhi to his wife i.e. defendant No. 1 and also gave the possession and declared that she would have a right of possession as owner of the said plot or let out the same to anybody. The said agreement was also signed by defendant No. 1 who accepted her mehar from the deceased. At the same time, the Will also includes another property i.e. 1/3rd share of the deceased in his ancestral land bearing No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi debarring the other legal heirs of the deceased. The Will disposes of more than 1/3rd of estate after the payment of funeral expenses and debts and there is no evidence placed on record that the heirs have consented to such a bequest. Exception to the law is if the registered Will produced is 30 years old which is a presumption u/s 90 of the Evidence Act, 1872 absence of heirs, consent of heirs, husband and wife, as the sole heirs, as it is permitted by custom which is recognized among Kutchi Memons and Khojab but the custom is excluded by the Indian Shariat Act, 1937, The West Punjab and N.W.F. (Shariat) Acts and the Kutchi Memons Act, 1938. A Mohammedan may dispose of his property by Will even in excess of 1/3rd where it is permitted by custom. Even consent has to be given either expressly or impliedly which cannot be inferred from the conduct of the heirs. In the present case, none of the conditions as mentioned are applicable. Therefore, the claim of defendant No. 1 under the Will must fail.

26. However, whatever may be her other rights to the properties of the deceased, she would be entitled for the same. As regards property bearing No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi, the deceased had 1/3rd share in the said property, a decree is accordingly passed to the effect that the plaintiffs and defendants were the legal heirs of the deceased Mohd. Ahmed are entitled in the shares provided by Muslim Law as detailed in para 4 of the plaint.

27. The above mentioned document i.e. agreement for payment of Mehrar dated 25th May, 1988, Ex.DW-1/7, is duly signed by the deceased as well as defendant No. 1 and also witnessed by two witnesses, namely, Sh. Barkat and Sh. Sirajuddin. The main contents of the said documents read as under:-

That we, both parties are husband and wife, and I, first party have to pay Rs. 10,000/- to the second party towards Mehrar which was agreed at the time of marriage. We, both parties have children, and I, first party, do not know as to at what time I may die due to my sickness, and due to nonpayment of Mehrar amount during my life time I can be held responsible in Heaven, and I, first party wish of my own, that my entire plot No. 96/10, Block "A" measuring 457.80 sq. yards situated at Wazirpur Industrial Area, Delhi, which consists, as stated below, of

which I am the sole owner be given to second party, and I give the said plot towards mehar to the second party my wife through this agreement, and I, first party have delivered the possession and ownership of plot in payment of Meharr to my wife/second party and made her its absolute owner and I, first party and my heirs are left with no claim/concern with the ownership or possession of the aforesaid plot, nor I shall claim, in future. Now the second party has a right to possession as owner of the said plot or let out the same against any rate of rent to anybody and to make constructional additions alterations as per her desire, and to mortgage or sell the same; and the second party will have all rights of ownership, which I was having. It will be the duty of the second party to maintain herself and her children from the income of the said plot and she will have to pass her life in my name and in maintaining the children. If the second party remarries, then the second party will not have any right or claim or concern with the aforesaid plot. I, second party has taken possession of the above plot in payment of Meharr.

It is the admitted position that in the Nikahnama (Ex.DW-1/2/Mark A/Ex.DW-1/D1) the amount of Meharr is mentioned as Rs. 10,000/- which was not paid at the time of contract of marriage. Meharr is accepted by defendant No. 1. The plaintiffs did not summon any of the witnesses who had signed the agreement for payment of Meharr. The argument of the plaintiffs is that the said document is a forged document as after the alleged execution of Ex.DW-1/7 the deceased had executed the General Power of Attorney dated 6th June, 1988 (Ex.DW-1/6) in favour of defendant No. 1 for the purpose of collecting the rent. Counsel submits that if the property in view of Meharr has already come to defendant No. 1, the question of executing the General Power of Attorney does not arise. Thus, it is not a genuine document.

28. As regards the dower is concerned, Section 41 of the Mohammedan Law provides that it is not in every case payable at once nor is it to be deferred in every case. The law allows the division of dower into two parts, "Prompt" and "Deferred". Deferred dower payable on the termination of marriage by death or divorce. The liability to pay deferred dower binds the husband during his lifetime and his estates after his death. In case, there is an agreement for payment of dower earlier than dissolution of marriage by death, such an agreement cannot be given effect to. It is also settled law that the husband may pay it by transferring property in lieu thereof u/s 47 of the Mohammedan Law. Dower is also an actionable claim and it is also heritable. If a Mohammedan widow obtains possession of the property of her husband lawfully and without any force or fraud, she or her heirs are entitled to retain possession and there is a presumption thereto.

29. It is no doubt true that the General Power of Attorney (Ex.DW-1/6) is of subsequent date to the mehar document (Ex.DW-1/7) and it does not mention the factum of agreement of mehar. In case, Ex.DW-1/6 is read, it appears that the document was mainly executed in favour of defendant No. 1 to maintain the

property in the Government Department and to realize the rents from the tenants. In the mehar document, it is clearly mentioned that he was not feeling fit, probably he had issued the General Power of Attorney but at the same time, it appears from the defence raised by defendant No. 1 that he was beaten by plaintiffs No. 1 & 2 on various occasions as also appeared from complaint recorded as DD No. 16A dated 29th April, 1982 (Mark E) and other statements made by defendant No. 1. It appears to the Court that the deceased did not want to disclose the said fact of agreement of mehar to plaintiffs No. 1 & 2 till his death. Other evidence i.e. invitation card (DW-1/9/Ex. PW-2/D1/Mark B) also indicates that in the marriage of plaintiff No. 2 the name of the deceased did not appear, the plaintiffs No. 1 & 2 also did not attend any of his last rites and the deposition of DW-1 who stated that the main cause of the death of Mohd. Ahmed was due to bad behavior of the plaintiffs who had also assaulted defendant No. 1.

Burden to prove issue No. 4 was upon the plaintiffs. There were some apprehensions about the genuineness of Ex.DW-1/7 i.e. agreement for payment of mehar dated 25th May, 1988 raised by the plaintiffs. At the time of agreement, he was the sole owner of the property. He had also given the possession thereto. It is a written document duly attested by two witnesses. None of the witnesses was summoned by the plaintiffs in order to prove that it is a forged and fabricated document. The effect of such agreement was to be given after the death of the deceased, thus after execution of the agreement in case the General Power of Attorney Ex.DW-1/6 was executed whereby defendant No. 1 was given power to receive the rent from the tenants or to maintain the property, it could not be declared that the said agreement for payment of mehar is forged document. It is the admitted position that the plaintiffs had not examined the handwriting expert to establish that the agreement is not signed by the deceased and defendant No. 1. There was no suggestion given by the plaintiffs at the time of cross-examination of DW-1 on this aspect. In the absence of above, it is held that Ex.DW-1/7 is a valid document and validly executed in favour of defendant No. 1 who accepted the mehar given by her husband by which she became the exclusive owner of the property at Wazirpur Industrial Area, Delhi.

30. The deceased husband of defendant No. 1 had to pay due amount of Rs. 10,000/- towards mehar which was agreed at the time of marriage and in lieu thereof the deceased by virtue of the agreement for payment of mehar gave one of his properties i.e. plot at Wazirpur Industrial Area to his second wife, the defendant No. 1 who accepted the same. Therefore, it is held that the agreement for payment of mehar is a valid document and the defendant No. 1 is the exclusive owner of the property i.e. plot No. 96/10, Block A, Wazirpur Industrial Area, Delhi.

31. In view of the findings arrived by this Court, issue Nos. 3, 4 and 6 are decided as under:

(i) The finding of the issue No. 3 is that the plaintiff No. 2 had executed the

relinquishment deed dated 19th April, 1983 in favour of late Sh. Mohd. Ahmed (Ex. PW-1/D3) by which the plaintiff No. 2 had surrendered his all rights with regard to one of the properties i.e. A-96/10, Wazirpur Industrial Area, Delhi. In view of the said relinquishment, the deceased Mohd. Ahmed became the sole and exclusive owner of the said property and the possession of the same was given by the deceased in favour of defendant No. 1 by means of Ex.DW-1/7 i.e. agreement for payment of Mehar dated 25.05.1998.

(ii) The finding of Issue No. 4 is that the deceased late Sh. Mohd. Ahmed at the time of his death left behind the following properties:

(A) 1/3rd undivided share in property No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi; and

(B) Share as co-lessee in leasehold property No. A-96/10, Wazirpur Industrial Area, Delhi, admeasuring 457.80 sq. yards with the Plaintiff No. 2 being the other co-lessee.

(iii) Issue No. 6 is decided in favour of the defendant No. 1 and against the plaintiff No. 2 in view of the reasons given in earlier paras of my judgment. The decision rendered by the arbitrators is binding upon the plaintiff No. 2 as the said decision had been acted upon between the plaintiff No. 2 and the deceased Mohd. Ahmed. Even the plaintiff No. 1 has admitted that the suit property bearing No. 7122/XIV situated at Ghas Mandi, Pahari Dhiraj Delhi, came into the share of plaintiff No. 2. In view of the arbitration award and settlement, the plaintiff No. 2 had executed the relinquishment deed Ex. PW-1/D-3. Thus, the issue No. 6 is decided accordingly.

32. With regard to issue No. 5, since the finding of property No. A-96/10, Wazirpur Industrial Area, Delhi, is given in favour of plaintiff No. 1, the question of rendering accounts by the defendant No. 1 does not arise. Therefore, the issue No. 5 is decided against the plaintiffs.

33. For the aforesaid reasons, the suit of the plaintiffs is decreed partly to the extent that a preliminary decree is passed by declaring that plaintiffs and defendants are legal heirs of the deceased except defendant No. 1 who is wife, and they are entitled to succeed to his property i.e. 1/3rd share in the property bearing No. 7649, Gali Munshi Abdul Rahim, Quresh Nagar, Sadar Bazar, Delhi in the shares provided by Muslim Law as detailed in para 4 of the plaint. The defendant No. 1 who is in possession is restrained from creating third party interest or transferring possession of any portion of the suit property to any third party until a final decree is passed by this Court. Parties are granted liberty to give their necessary suggestions within 8 weeks from today with regard to partition by metes and bounds or any other method or manner for the purpose of passing the final decree. Rest of the prayers made by the plaintiffs mentioned in the plaint are dismissed. Issue No. 7 is also decided accordingly. Parties to bear their own costs. List the matter on 22nd April, 2013 before the Roster Bench for further proceedings.