Kiranjit Gujral & Ors Vs Paminder Gujral & Ors

FAO(OS) 89 Of 2023 & Civil Miscellaneous Application No. 43618 Of 2023

Court: Delhi HC

Date of Decision: Oct. 17, 2025

Acts Referred:
Code of Civil Procedure, 1908 — Section 10, 96, 151, Order 12 Rule 6
Delhi High Court Act, 1966 — Section 10
Indian Succession Act, 1925 — Section 263
Evidence Act, 1872 — Section 58

Hon'ble Judges: Anil Kshetarpal, J; Harish Vaidyanathan Shankar, J

Bench: Division Bench

Advocate: Uday Bedi, Smiksha Singhroha, Tanmaya Mehta, Karan Nagrath, Nupur Kumar, Niharika Nagrath, Mohita Nagrath, Ambuj Tiwari, Niharika Tanwar, Arjun Nagrath, Bishan Pal Sharma, Kishan Yadav, Aryan Bhardwaj

Final Decision: Allowed

Judgement

Anil Kshetarpal, J

1. With the consent of the learned counsel representing the parties, the present Appeals that arise out of the same civil suit bearing CS(OS) No. 3262/2012 titled as *Shri Paminder Gujral & Ors. vs. Kiranjit Gujral & Ors.*, shall stand disposed of by this common Order.

2. FAO(OS) 89/2023 has been filed under Section 10 of the Delhi High Court Act, 1966, against the Judgment dated 19.07.2023 passed by the learned Single Judge [hereinafter referred to as “LSJ”] in IA. No. 5138/2018 in CS(OS) No. 3262/2012, wherein the application under Section 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as “Code”] filed on behalf of Appellants seeking stay of the proceedings in terms of Section 10 of the Code, was dismissed.

3. The second Appeal, being RFA (OS) 43/2024, filed under Section 96 read with Order XLI of the Code, challenges the Judgment dated 28.06.2024 passed by the LSJ in I.A. 17361/2018 in CS(OS) No. 3262/2012, wherein the LSJ, while exercising the enabling powers under Order XII Rule 6 of the Code, passed a preliminary decree on admissions and thereby, partitioned the moveable assets of Late Mr. Mohinder Singh Gujral [hereinafter referred to as “MSG”] among his four children.

COMMON FACTUAL MATRIX

4. At the inception, it is apposite to advert to the relevant facts leading up to the filing of the present Appeals.

5. Sh. Paminder Singh Gujral, Smt. Neelu Chawla, Smt. Ranju Sayall [Respondent Nos.1 to 3, respectively], and Sh. Kiranjit Singh Gujral [Appellant No.1] are children of MSG and his wife, Late Smt. Upkar Gujral. Sh. Rohun Gujral and Sh. Rahil Gujral [Appellant Nos.2 and 3] are sons of Sh. Kiranjit Singh Gujral. For ease of convenience, the family tree has been reproduced below, demonstrating the status and rank of the parties before the learned Single Judge and before this Court.

6. Smt. Upkar Gujral passed away on 08.10.2004. Upon her demise, besides moveable properties, she left behind the following immoveable properties:

i. A-6, New Friends Colony, New Delhi- 110065 [hereinafter referred to as “New Friends Colony property”]

ii. 802- Vishal Bhawan, 95, Nehru Place, New Delhi-110019 [hereinafter referred to as “Nehru Place property”]

7. Late Smt. Upkar Gujral executed a Will dated 21.07.1995 bequeathing her moveable and immoveable assets in favour of her husband, MSG, which was subsequently probated vide Order dated 15.05.2007 in Probate Case No.234/2006 captioned *M.S. Gujral v State of NCT of Delhi & Ors*. passed by the District Court, Tis Hazari Courts, Delhi. However, after the death of MSG, the Respondents have applied for the revocation of the aforementioned probate by instituting a petition, being Probate Case No.42418/2016 captioned *Paminder Singh Gujral & Ors. Vs. State & Ors*., under Section 263 of the Indian Succession Act, 1925, before the District Court, Tis Hazari Courts, Delhi. The Respondents have submitted that the probate has been revoked vide Order dated 13.11.2019 passed by the Additional District Judge, Central District, Tis Hazari Courts, New Delhi [hereinafter referred to as “ADJ”] and against the said Order, an Appeal, i.e., FAO 68/2020 captioned Kiranjit Gujral vs State of NCT of Delhi & Ors. is pending consideration in this Court. The next date of hearing of the said Appeal is 28.10.2025.

8. MSG passed away on 04.05.2012. During his lifetime, he executed two separate Wills, both dated 09.05.2008, in relation to the abovementioned two immoveable properties. By virtue of these wills, he bequeathed the New Friends Colony property in favour of his grandsons, Sh. Rohun Gujral and Sh. Rahil Gujral and the Nehru Place property to his daughter, namely Smt. Neelu Chawla. The probate petitions, Probate Case No.5969/2016 and Probate Case No.5921/2016, regarding these Wills, are pending adjudication before the District Court, Saket Courts, New Delhi.

9. In 2012, the Respondents filed CS(OS) No.3262/2012 [hereinafter referred to as “partition suit”] for partition, possession, rendition of accounts and for perpetual and mandatory injunction, while raising questions regarding the genuineness of the Wills executed by their parents and claiming that they died intestate.

10. It has been stated that prior to the above suit, the Appellants had instituted CS(OS) No.21/2013 captioned *Kiranjit Gujral Ors. Vs. Paminder Paul,* seeking a declaration and permanent injunction with regard to the New Friends Colony property, before this Court. However, due to the enhancement of the minimum pecuniary jurisdiction of this Court, the said suit was transferred to the District Courts, Saket and remains pending for adjudication.

11. In CS(OS) No.3262/2012, the Appellants filed an application bearing I.A. No.5138/2018 under Section 151 of the Code, praying for the grant of stay of the partition suit proceeding under Section 10 of the Code, in light of the pending probate, revocation of probate proceedings and CS(OS) No.21/2013.

12. The said application was dismissed by the LSJ vide Order dated 19.07.2023, while observing that for a suit to qualify as a previously instituted suit under Section 10 of the Code, the entire subject matter in issue should be directly and substantially present in the previously instituted suit. The LSJ held that the probate proceedings, and CS(OS) No.21/2013 pending in the courts below, cannot be termed as a previously instituted suit as mandated under Section 10 of the Code for the stay of proceedings. Aggrieved by the said Order, the Appellant has filed FAO(OS) 89/2023.

13. Pursuant thereto, another application bearing I.A. No.17361/2018 was filed by the Respondents under Order XII Rule 6 read with Section 151 of the Code, seeking a judgment on admission for moveable assets against the Appellants. The Respondents claimed a 1/4th share each in all moveable properties left by their father, MSG, along with interest on the said amount, on the ground that the wills, both dated 09.05.2008, executed by MSG pertained only to immoveable assets, as admitted and established from the Written Statement of the Appellants.

14. The LSJ allowed the application, and a preliminary decree was passed holding that deceased MSG had died intestate insofar as it pertained to moveable assets and properties and that all the Respondents and the Appellant No.1 are entitled to a 1/4th share each in all the moveable assets of MSG. Aggrieved by this Judgment, RFA(OS) 43/2024 was filed by the Appellants.

SUBMISSIONS IN FAO(OS)89/2023

15. Learned counsel for the Appellants indicates that there are previously instituted proceedings pending before the competent courts, concerning the two immoveable properties, which form the subject matter of the underlying suit herein. A list of these

proceedings is provided below:

i. PC No. 5969/2016 with regards to Will dated 09.05.2008 for the grant of letters of administration for the New Friends Colony property.

ii. PC No. 5921/2016 with regards to Will dated 09.05.2008 for the grant of letters of administration for the Nehru Place property.

iii. CS(OS) 21/2013 filed by the Appellant Nos.1 to 3 for a declaration in favour of Appellant Nos.2 and 3 concerning the New Friends Colony property and for permanent injunction thereof.

iv. FAO(OS) 68/2020 - appeal against the Order dated 13.11.2019 wherein the probate granted vide Order dated 15.05.2007 with respect to the Will of Late Smt. Upkar Gujral, in favour of MSG, was revoked.

He contends that, in view of the pendency of the abovementioned proceedings, the present matter is liable to be stayed in terms of Section 10 of the Code, as the result of these proceedings will have a substantial bearing upon the adjudication of the present suit.

16. It is further submitted that even if the stay of the probate proceedings and CS(OS) 21/2013 does not fall strictly within the ambit of Section 10 of the Code, the same would nevertheless be maintainable under Section 151 of the Code. It is further contended that Section 10 of the Code is not exhaustive and does not curtail the inherent powers of the High Court to pass appropriate orders for stay in situations where conflicting decisions may arise, or where the outcome of one proceeding is likely to have a bearing on the other.

17. The Appellant has placed reliance on the observations made in Paragraph No.5 of the Order dated 08.09.2017 in TRP(C) No.147/2017 passed by the learned Single Judge, by submitting that the observations strike at the root of the matter and also discussed the commonality of material issues that are arising between the parties in these proceedings.

18. Lastly, the learned counsel for the Appellant contends that even if the entire proceedings in CS(OS) No.3262/2012 were not to be stayed, the LSJ could have, at the very least, observed that the partition of the immoveable properties shall await the outcome of the pending probate proceedings.

19. Per contra, learned counsel for the Respondent has submitted that the Appellants themselves have agreed that their case cannot be stayed under Section 10 of the Code. It is submitted that Section 151 of the Code cannot override the exhaustive provisions of the Code, and what is not permissible under the exhaustive provisions of the Code cannot be done indirectly by invoking the inherent powers under Section 151 of the Code. He contends that a bare perusal of the order dated 08.09.2017 passed in T.R.P(C) No.147/2017 shows that the same are mere observations of the Court and are not binding in nature and therefore, cannot be the basis to sustain an application under Section 10 of the Code.

SUBMISSIONS IN RFA (OS) 43/2024

20. Learned counsel for the Appellant has advanced the following arguments in support of his appeal:

20.1 There is no categorical, clear, unambiguous, and unequivocal admission in the Written Statement filed by the Appellants that could justify the invocation of Order XII Rule 6 of the Code.

20.2 MSG had meticulously planned the distribution of his moveable assets and had already designated the intended beneficiaries by creating joint bank accounts, lockers, fixed deposits with nominees, and other arrangements.

20.3 The facts of the present case necessitate a trial involving the leading of evidence and cross-examination of the parties to verify the veracity of their pleadings and the decision cannot be reached on mere admission.

ANALYSIS

21. This Court has heard the learned counsel representing the parties at length, and with their able assistance, perused the paper book along with the scanned copy of the requisitioned record in support of their submissions. Since the issues involved in the respective appeals are distinct, we intend to answer the issues arising in each appeal under separate heads.

RFA (OS) 43/2024

22. Before moving to the submissions advanced by the Appellants, it is appropriate to refer to the scope and intent of Order XII Rule 6 of the Code, which reads as follows:

"ORDER XII

Admissions

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

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

23. It is a settled proposition of law that Order XII Rule 6 of the Code is an enabling provision that empowers the Court to pronounce judgment on the basis of an admission. The exercise of such power is discretionary in nature and must be exercised only after due consideration of the facts and circumstances of each case. The admission relied upon must be clear, unambiguous, and unconditional and one that leaves no room for any other conclusion, except one in favour of the Applicant. The Court must, therefore, exercise this discretion with utmost caution so as not to deprive the Defendant of their valuable right to contest the matter through a full trial.

24. The Supreme Court in a recent pronouncement *Rajiv Ghosh v. Satya Naryan Jaiswal* 2025 SCC OnLine SC 751 has discussed the object and intention behind Order XII Rule 6 of the Code in detail, which reads as follows:

"24. Rule 6(1) empowers the court to pronounce a judgment upon admissions made by parties without waiting for the determination of other questions.

25. Rule 6(2) states that a decree shall be drawn up in accordance with the judgment.

26. The primary object underlying Rule 6 is to enable a party to obtain speedy judgment at least to the extent of admission. Where a plaintiff claims a particular relief or reliefs against a defendant and the defendant makes a plain admission, the former is entitled to the relief or reliefs admitted by the latter. [See : Uttam Singh v. United Bank of India, (2000) 7 SCC 120]

27. As observed in the Statement of Objects and Reasons for amending Rule 6, "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled."

28. The provisions of Rule 6 are enabling, discretionary and permissive. They are not mandatory, obligatory or peremptory. This is also clear from the use of the word "may" in the rule.

29. The powers conferred on the court by this rule are untrammeled and cannot be crystallized into any rigid rule of universal application. They can be exercised keeping in view and having regard to the facts and varying circumstances of each case.

30. If the court is of the opinion that it is not safe to pass a judgment on admissions, or that a case involves questions which cannot be appropriately dealt with and decided on the basis of admission, it may, in exercise of its discretion, refuse to pass a judgment and may insist upon clear proof of even admitted facts.

31. To make order or to pronounce judgment on admission is at the discretion of the court. First, the word "may" is used in Rule 6 and not the word "shall" which prima facie shows that the provision is an enabling one. Rule 6 of Order 12 must be read with Rule 5 of Order 8 which is identical to the Proviso to Section 58 of the Evidence Act. Reading all the relevant provisions together, it is manifest that the court is not bound to grant relief to the plaintiff only on the basis of admission of the defendant. (See : Sher Bahadur v. Mohd. Amin, AIR 1929 Lah 569)

32. In the leading decision of Throp v. Holdsworth, Jessel, [L.R.] 3 Ch. 637 (640) M.R. said: "This rule enables the plaintiff or the defendant to get rid of so much of the action, as to which there is no controversy."

33. In Uttam Singh (Supra) the plaintiff bank filed a suit for recovery of a large sum of money against the defendant. It also filed an application under Order 12, Rule 6 for judgment upon admission in respect of part of claim. The application was allowed and a decree was passed. An appeal against the decree was also dismissed by the High Court. The defendant approached this Court. It was contended before this Court by the defendant that (i) Rule 6 of Order 12 covers only those admissions made in pleadings; (ii) the effect of the admissions can only be considered at the trial of the suit; and (iii) the provision of Order 12, Rule 6 must be read along with the provisions of Order 8 and the court should call upon the plaintiff to prove its case independent of so called admissions.

34. Negativing the contentions and referring to the object of Order 12, Rule 6, the Court observed that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The scope of Rule 6 should not be narrowed down where a party applying for judgment is entitled to succeed on a plain admission of the opposite party. The admission by the defendant was clear, unambiguous, unequivocal and unconditional. The courts below were, therefore, right in decreeing the suit of the plaintiff."

***

36. A Division Bench of the Delhi High Court very correctly laid down the following interpretation of the provision of O. 12, R. 6, CPC, in the decision of ITDC Limited v. Chander Pal Sood and Son, (2000) 84 DLT 337 (DB) : (2000 AIHC 1990):

"Order 12, R. 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing."

37. The use of the expression 'otherwise' in the aforesaid context came to be interpreted by the High Court. Considering the expression the Court interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also dehors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties' statement is recorded under O. 10, Rr. 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein.

***

39. This rule authorizes the court to enter a judgment where a claim is admitted and to pass a decree on such admitted claim. This can be done at any stage. [See : Uttam Singh (supra)]. Thus, a plaintiff may move for judgment upon admission by the defendant in his written statement at any stage of the suit although he has joined issue on the defence." [See : Brown v. Pearson, [L.R.] 21 Ch. 716]. Likewise, a defendant may apply for dismissal of the suit on the basis of admission by the plaintiff in rejoinder.

***

43. A decree under Rule 6 may be either preliminary or final. [See : Sivalinga v. Narayani, AIR 1946 Mad 151]"

Emphasis supplied

25. Late Smt. Upkar Gujral had bequeathed her moveable and immoveable assets to her husband, MSG, by way of a Will dated 21.07.1995, which stood probated. It has come to the notice of the Court that the said probate was revoked vide Order dated 13.11.2019 in Probate Case No.42418/2016 captioned *Paminder Singh Gujral & Ors. Vs. State & Ors.* passed by the ADJ. The Respondents claimed that Smt. Upkar Gujral never executed a will regarding her properties/assets and died intestate. Against the revocation order, an appeal, being FAO 68/2020, is pending before this Court.

26. The two Wills, both dated 09.05.2008, executed by MSG pertain solely to immoveable properties and have made no reference to moveable assets. Accordingly, it follows that MSG died intestate in respect of his moveable properties.

27. The Appellants assert that there is no categorical admission made by them in their Written Statement for the invocation of Order XII Rule 6 of the Code. In Paragraph Nos.31 and 32 of their Written Statement in the suit, the Appellants have stated that during the lifetime of MSG, he distributed and divided the moveable assets amongst his legal heirs by nominating each legal heir as nominee or joint account holder or partner to whom he intended to bequeath the moveable property after his demise, to the exclusion of all the other legal heirs.

28. The LSJ has delved deeper into the meaning of the word 'nominee' and the entitlement of the persons who are appointed as the nominees to any moveable asset. The relevant portion of the impugned judgment is extracted below:

"39. Black's Law Dictionary (7th Edition) defines 'nominee' as a party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.

40. The Apex Court discussed the status of nominee in insurance in the case of Sarbati Devi v. Usha Devi, (1984) 1 SCC 424. While considering the interest in the amount received by the nominee when the insured dies intestate under the Insurance Act, 1938, it was held that a nominee cannot be treated equivalent to an heir or legatee as 'nomination' does not operate as succession or 'statutory testament' and is subject to claim of heirs of the insured under law of succession.

41. In Nozer Gustad Commissariat v. Central Bank of India, 1992 SCC OnLine Bom 481, the Bombay High Court while considering the Claims under the EPF & Miscellaneous Provisions Act, 1952, relied on principle laid down in Sarbati Devi (supra) to hold that a 'Nominee' does not have an absolute title to provident fund amount of the deceased.

42. Similarly, in Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani, (2000) 6 SCC 724 the Apex court held that a 'nominee' of the National Savings Certificates has a right to be paid the sum after the death of the holder; however he retains the amount for the benefits of persons entitled to it under law of succession.

43. In Ram Chander Talwar v. Devender Kumar Talwar, (2010) 10 SCC 671 the Apex court held that 'nominee' of a deceased under the Banking Regulation Act, 1949 merely gives the nominee an exclusive right to receive the money lying in the bank account of deceased but does not make the nominee an owner of the money.

44. In the recent case of Shakti Yezdani v. Jayanand Jayant Salgaonkar, (2024) 4 SCC 642 wherein the testator had executed a Will making provision for devolution of his estate by nominating successors, the nominee-respondent filed a Suit for Permanent Injunction, for restraining the appellants and other respondents from taking any action in respect of the properties, the Apex court after canvassing the law on nomination vis-a-vis various statutes like Insurance Act, 1938, EPF & Miscellaneous Provisions Act, 1952, Banking Regulation Act, 1949 and Companies Act, 1956 held that a nomination would not lead to the nominee attaining absolute title over the subject property to the exclusion of legal heirs as law of succession shall not be impacted by such nomination."

29. It is evident from the above-referred judgments that a nominee is merely a trustee of the assets who holds the assets but is not a person who is entitled to them exclusively, and the assets are to be distributed to all the legal heirs. Therefore, it is not right for the Appellants to submit that all the moveable assets of MSG were distributed before his death and given to the respective nominees/joint owners, as the respective nominees are not entitled to exclusive inheritance of such assets.

30. Keeping in view the aforesaid discussion, we find no error in the impugned judgment passed by the LSJ holding that all the children of MSG, that is, Appellant No.1 and Respondents, are entitled to a 1/4th share each in all the moveable assets of MSG, which he was holding at the time of his demise.

FAO(OS)89/2023

31. The primary contention of the Appellants is that the proceedings in the partition suit ought to have been stayed under Section 10 of the Code, as there are pending proceedings in relation to the properties that form the subject matter of the partition suit. The said provision reads as follows:

"10. Stay of suit.—*No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

32. The provision lays down three essential conditions necessary for the due application of Section 10 of the Code, which are set out hereinbelow:

i. The matter in issue in the subsequently instituted suit must be directly and substantially in issue in the previously instituted suit;

ii. The parties to both the suits must be the same, or their representatives should be claiming under the same title; and

iii. Both Courts have competent jurisdiction to grant relief in both instituted suits.

33. The purpose behind Section 10 of the Code has been explained by the Supreme Court in Paragraph No.8 of *National Institute of Mental Health & Neuro Sciences v. C. Paremeshwara* (2005) 2 SCC 256. The Court observed that the object of Section 10 of the Code is to avoid duplication of trials on identical issues before different courts and to prevent the possibility of conflicting

findings being recorded on matters that are directly and substantially in issue in a previously instituted suit. Further, the language of Section 10 of the Code evidences that it applies only to suits instituted in the civil court, and not to proceedings of a different nature instituted under any other statute. The Court emphasised that for the provision to apply, the subject matter in both the proceedings must be identical.

34. The law was further crystallised in *Aspi Jal v. Khushroo Rustom Dadyburjor* (2013) 4 SCC 333, wherein it was observed that the key words in Section 10 of the Code are that the matter in issue is directly and substantially in issue in a previously instituted suit. The test for the applicability of Section 10 of the Code is whether the final decision in the previously instituted suit would operate as res judicata in the subsequent suit. When the matter in controversy is the same, it may be immaterial what further relief is claimed in the subsequent suit.

35. It has been well settled that the probate proceedings are distinct from those of a partition suit as they operate in entirely separate and independent domains. The question under consideration in probate proceedings is confined to whether the will propounded before the Court was duly executed by the testator in a state of sound mind and in accordance with law. Most importantly, it does not adjudicate upon the rights or title of the parties to the property bequeathed. In contrast, a partition suit pertains to the division and demarcation of property among legal heirs, arising out of intestate succession. It involves a determination of ownership rights, shares, and possession over the estate of a deceased person who has not left behind a valid will.

36. To construe that a probate petition cannot be treated as a previously instituted suit and therefore, Section 10 of the Code has no application, the Appellant has contended that in such a situation, Section 151 of the Code may be invoked to stay the partition proceeding. The moot question then arises is whether the partition suit can be stayed by invoking the inherent powers of the Court under Section 151 of the Code, even if such a stay is impermissible under Section 10 thereof. It is appropriate to extract Section 151 of the Code hereinbelow:

***"151. Saving of inherent powers of Court**.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."*

37. A bare perusal of the above provision indicates that the inherent powers of the Court may be invoked where such orders are necessary either to secure the ends of justice or to prevent abuse of the process of the Court. In our view, the Court is empowered to stay proceedings to meet the ends of justice under Section 151 of the Code. However, this power is to be exercised sparingly and only in exceptional circumstances.

38. Even if it is presumed that the stay cannot be contemplated under Section 10 of the Code, as has been held by the LSJ on the account that the matters in issue are distinct in the respective proceedings, the LSJ could nevertheless have stayed the proceedings of the partition suit under Section 151 of the Code to meet the ends of justice.

39. In the present case, the suit was filed seeking partition, possession, rendition of accounts, and perpetual and mandatory injunction with regard to the moveable and immoveable assets/ properties left behind by Late Smt. Upkar Gujral and Late Sh. Mohinder Singh Gujral. The moveable assets, which were also part of the original dispute, already stand partitioned vide the preliminary judgement on admission dated 28.06.2024.

40. While it is settled that the findings in a probate case do not automatically determine the outcome of a partition suit, and that the pendency of one does not necessarily bar the continuation of the other, in the present case, the partition suit now effectively pertains only to the two immoveable properties mentioned above. Therefore, the entire subject matter of the partition suit overlaps with that in the probate petitions, revocation of probate petition and also of the civil suit instituted by the Appellants for declaration and permanent injunction.

41. The probate petition in respect of the Will dated 21.07.1995, purportedly executed by the mother, was initially allowed by Order dated 15.05.2007. However, the grant of probate was subsequently revoked by an Order dated 13.11.2019 passed by the ADJ, which is presently under challenge before this Court in Appeal. Further, two probate Petitions, being Probate Case Nos.5969/2016 and 5921/2016, concerning the Wills, both dated 09.05.2008, allegedly executed by MSG in relation to the aforesaid properties, are also pending adjudication. CS(OS) No.21/2013 was instituted seeking a permanent injunction in relation to only one of the immoveable properties, that is, the New Friends Colony property, which is a part of the suit properties in the partition case.

42. If the Wills dated 09.05.2008 are ultimately probated in favour of the concerned beneficiaries, the scope of the partition suit will vary. Consequently, the outcome of the partition proceedings is inextricably linked to the decisions in the pending probate and revocation proceedings. In these circumstances, it would be appropriate and efficient to await the conclusion of those probate proceedings as well as the appeal against revocation of probate, as doing so would avoid duplication of effort and unnecessary

expenditure of time and resources for all parties involved.

43. Keeping in view the facts of the case and law discussed, this Court finds it appropriate to set aside the impugned Order dated 19.07.2023 passed by the LSJ in IA. No.5138/2018 in CS(OS) No.3262/2012.

CONCLUSION

44. With the foregoing discussion, the challenge to the impugned Judgement dated 28.06.2024 is devoid of merit and therefore, RFA(OS) 43/2024 is dismissed. All pending applications stand closed.

45. In light of the aforementioned discussion, FAO(OS) 89/2023 is allowed. The prayer sought by the Appellants in the said appeal is to stay the proceedings of CS(OS) No.3262/2012, until adjudication of Probate Case Nos.5969/2016, 5921/2016 and 424l8/2016. Since the Probate Case No. 42418/2016 has already been adjudicated, the further proceedings in CS(OS) No.3262/2012 shall remain stayed until the adjudication of Probate Case Nos. 5969/2016 and 5921/2016.