



2026:DHC:4568



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 11th May, 2026**
Pronounced on: 21st May, 2026

+ **RFA 481/2026**

MR. DILEEP SINGH
S/o Late Sh. Parshuram Singh
R/o 122B/1B, Ground Floor,
Gautam Nagar, Delhi-110049.

.....Appellant

Through: Mr. Nishant Das, Mr. Aditya Rana
and Ms. Aatrayi Das, Advocates
along with Appellant in person

versus

SMT. GIRIJA DEVI
W/o Late Sh. Parshuram Singh
R/o 122B/1B, First Floor,
Gautam Nagar, Delhi-110049.

.....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA
J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been preferred by the Defendant/Appellant, Dileep Singh, to set aside the Judgment and Decree dated 23.03.2026, whereby the learned District Judge has decreed the Suit filed by the *Plaintiff/Respondent* for



Rs.8,99,015/- along with pendent lite and future interest @ 6% per annum from the date of institution of the Suit till the date of realization.

2. The Civil Suit bearing CS DJ5540/2016 was filed by the Respondent/Plaintiff seeking recovery of Rs.8,99,015, along with *pendent lite* and future interest.

3. The **facts as narrated in the Plaintiff**, were that the Defendant, *Dileep Singh is the son of the Plaintiff* and grandson of Late Sh. Prabhu Nath Singh (*father-in-law of the Plaintiff*), who expired on 01.08.2009. During his lifetime, Sh. Prabhu Nath Singh from his own funds and resources, purchased a *property bearing No.122-B/1-B, Gautam Nagar, New Delhi*, where the Defendant as well as the Plaintiffs, are residing.

4. Late Sh. Prabhu Nath Singh had opened Joint Accounts in various Banks and Post office in the name of himself, the Plaintiff and the Defendant, wherein all savings were deposited by him. The Accounts were operated by him and he manage all household affairs, during his lifetime. Being illiterate, the Plaintiff was not aware of the details of the Bank Accounts and Post Office Accounts, maintained by Late Prabhu Nath Singh.

5. After the demise of Sh. Prabhu Nath Singh, the Accounts were operated by the Defendant/Appellant, Dilip Singh, since the Plaintiff was an illiterate lady and had complete faith in the Defendant, being her son. Whenever the Plaintiff asked for money for running the household and for her personal expenses, as were given by Late Prabhu Nath Singh, the attitude and behavior of the Defendant towards the Plaintiff became sour/hostile and he started quarreling, abusing, assaulting and even threatening the Plaintiff, while flatly refusing to pay her a single penny. It



was further alleged that the Defendant neither disclosed the details of the Bank and Post Office Accounts opened by Late Sh. Prabhu Nath Singh nor handed over any documents pertaining thereto, despite repeated requests.

6. The *Defendant also filed a Probate Case for grant of Will dated 26.06.2007* executed by Late Sh. Prabhu Nath Singh, but deliberately and intentionally failed to implead the Plaintiff, as a necessary party. Thereafter, the Plaintiff moved an Application seeking her impleadment as a necessary party, which was allowed, and she was supplied a copy of the Petition.

7. On perusal of the Will, it was revealed that the Plaintiff had 50% share in the Bank Accounts as well as Post Office Accounts jointly held in the names of Late Sh. Prabhu Nath Singh, the Plaintiff and the Defendant. The Plaintiff thereafter, approached the Defendant and requested him to provide photocopies of the relevant documents, but he allegedly avoided doing so and also failed to pay her any amount.

8. At the time of the demise of Late Sh. Prabhu Nath Singh, the younger son of the Plaintiff was a minor, aged about 14 years. However, after he attained the age of majority, the Plaintiff informed him about her apprehensions regarding the Bank Accounts. Thereafter, the Plaintiff along with her younger son, visited the Indian Overseas Bank, Yusuf Sarai Branch, New Delhi, and met the concerned Branch Manager.

9. Upon enquiry, the Plaintiff was informed by the Bank Manager that Late Sh. Prabhu Nath Singh had opened Savings Account No. 107001000001077, jointly in the names of himself, the Plaintiff and the Defendant. A duplicate Passbook was thereafter, issued to the Plaintiff, on 17.06.2013. Upon perusal of the Passbook, the Plaintiff was shocked to



discover that, as on 29.07.2009, there was a balance of Rs.17,98,030.77 in the said Account, around the time of demise of Late Sh. Prabhu Nath Singh on 01.08.2009. However, after his demise, the Defendant had fraudulently and with *mala fide* intent, withdrawn the money from the Joint Account, which was wholly illegal. The Defendant never informed the Plaintiff regarding the withdrawal of the said amount, which shows his deceitful and fraudulent intention of grabbing/usurping the entire amount.

10. The Plaintiff claimed that *she is entitled to 50% share in the bank balance of Rs.17,98,030.77, which was lying in the Bank Account of Late Sh. Prabhu Nath Singh on the date of his demise on 01.08.2009, in terms of the Will executed by him.*

11. A Legal Notice dated 10.08.2013 was served upon the Defendant through Speed Post, despite which he failed to pay the amount.

12. Consequently, the **Plaintiff instituted a Suit for Recovery of Rs.8,99,015/- along with interest @ 12% per annum.**

13. The Defendant, in his *Written Statement*, claimed that the Probate Petition in respect of the Will executed by Late Shri Prabhu Nath Singh, was pending in the Court of learned ADJ, New Delhi. In view of the pendency of the Probate Petition, the present Suit was not maintainable and is liable to be dismissed.

14. The Defendant further claimed that the Plaintiff had not approached the Court with clean hands and had concealed material facts. It was stated the entire dispute between the parties was settled in the month of December 2009, in the presence of the family members of the Defendant's wife.



15. According to the Defendant, the Plaintiff was well aware, since the year 2009, of the Joint Bank Account standing in the names her father-in-law, herself and the Defendant, as well as the other Account maintained in the names of the Defendant and his wife, with the Indian Overseas Bank, New Delhi. Upon learning about the transactions in the said Accounts on 10.09.2009, the Plaintiff made a complaint to the concerned Bank Officer, pursuant to which the transactions in both the Accounts, were suspended. Thereafter, the Plaintiff addressed another Letter dated 30.09.2009 to the bank permitting operation of the Account and, accordingly, the operation of Account No.52761, was restored.

16. In the month of December 2009, in the presence of the family members of the Defendant's wife, the disputes between the parties were amicably settled and the parents of the Defendant took the entire gold jewellery, towards full and final Settlement. A sum of Rs.1,00,000/- in cash was also paid by the Defendant, to them. It was, therefore, contended that the present Suit, having been filed after a lapse of more than four years, was not maintainable. *Furthermore, the Suit is stated to also barred by limitation.*

17. On *merits*, all the averments made in the Plaint, were denied. It was submitted that the father of the Defendant, was a habitual drinker from the very beginning and on account of such drinking habits, had suffered memory loss and remained under treatment and observation at AIIMS, Delhi for a considerable period of time. Although he had recovered to some extent, he was never fully fit.



18. According to the Defendant, his grandfather had somehow managed to secure employment for him in AIIMS as a DHG/Private Guard, but he was unable to continue owing to his mental incapacity. It was asserted that this was the reason why Late Sh. Prabhu Nath Singh, while executing his Will, bequeathed his properties in favour of his grandson and not in favour of the Plaintiff's husband.

19. The Defendant further denied the allegations that he had concealed the details of the Bank and Post Office Accounts opened by Late Shri Prabhu Nath Singh. It was claimed that the Plaintiff, as well as her husband, were fully aware of the said Accounts, from the very beginning. It was further asserted that pursuant to the Settlement which had already taken place in December 2009, all amounts due, had been duly paid to them. All parties were living happily thereafter. The Plaintiff, at the instance of her younger son, had instituted the present Suit, despite the fact that the younger son had been brought up by the Defendant with utmost care and affection.

20. It was, therefore, submitted that the present Suit was devoid of merit and liable to be dismissed.

21. The Plaintiff, in the **Replication**, re-affirmed her assertions as made in the **Plaint**.

22. On the pleadings of the parties, **Issues** were framed on 19.09.2014 as under:

(i) *Whether the Plaintiff is entitled to get 50% amount i.e. Rs.8,99,015/- from the account no.107001000001077 of Late Prabhu Nath Singh? OPP*

(ii) *Whether the defendant had already received gold jewellery and a sum of Rs.1,00,000/- in settlement in lieu*



of the amount claimed from saving account of Late Prabhu Nath Singh? OPD

(iii) Whether the suit is without any cause of action? OPD

(iv) Whether the present suit is time barred? OPD

(v) Whether the plaintiff has not approached the court with clean hands? OPD

(vi) Whether the plaintiff is entitled to any relief.

23. The Plaintiff in support of her evidence appeared as **PW-1**, and deposed on the same lines as the averments made in the Plaint. She proved all the documents Ex. P1 to Ex. P6 and the same were not under challenge.

24. **PW-2**, Abhay Singh, younger son of the Plaintiff, corroborated the testimony of Plaintiff.

25. The Defendant examined himself as **DW-1** and deposed on similar lines as his defence in the Written Statement.

26. **DW-2**, Smt. Seema Singh, wife of Defendant corroborated his testimony.

27. **DW-3**, Abhishek Singh, nephew of his wife, who was witness to the Settlement, supported that the oral Settlement had taken place between the family members in December, 2009.

28. **DW-4**, Anil Kumar, Clerk, Indian Overseas Bank, Yusuf Sarai Branch, New Delhi, produced the record pertaining to Savings Bank Account No.1077 standing in the joint names of Prabhu Singh, the Plaintiff/Girija Devi, and the Defendant, Dilip Singh. He also produced Letter dated 04.09.2009, exhibited as Ex.PW4/1, issued by Smt. Girija Devi/Plaintiff, whereby instructions were given to the Bank not to permit operation of the said Account by the Defendant without her consent. He



further produced Letter dated 07.09.2009, exhibited as Ex.PW4/2, issued by the Bank to the Defendant and Smt. Seema Singh, pursuant to the aforesaid communication issued by Smt. Girija Devi.

29. The **learned District Judge** considered the evidence led by the parties and observed that the Will dated 26.06.2007, Ex.P2, executed by Late Prabhu Nath Singh, was not in dispute. Though Section 68 of the Indian Evidence Act, 1872 mandates the examination of at least one attesting witness to prove a Will, however in the present case, neither the genuineness, validity nor due execution of the Will was challenged. In fact, the Will stood admitted by both the parties. It was, thus, held that the Will dated 26.06.2007, Ex.P2, stands duly admitted and proved.

30. It was further observed that, in view of the clear, specific and unequivocal admissions of the Defendant, the requirement of examining an attesting witness under Section 68 of the Evidence Act stood dispensed with, as held in the case of Thayyullathil Kunhikannan vs. Thayyullathil Kalliani AIR 1990 Ker 226 (DB); Boomathi vs. Murugesan 2023 SCC OnLine Mad 8488; P. Radha vs. Irudayadoss, 2022 SCC OnLine Mad 886; Darisi Masthanamma vs. Mandiga Ram Krishna AIR 2006 AP 286 and Rajeev Gupta vs. Prashant Garg 2021 SCC OnLine All 2253.

31. Furthermore, a Judgment dated 11.05.2016 had been passed in Probate Case No.120/2011, whereby the Will was held to be duly proved. It was, therefore, concluded that, in terms of the Will, the cash balances lying in joint Accounts maintained with various Banks and Post Offices were to devolve jointly upon the Joint Account Holders. Accordingly, the Plaintiff and the Defendant were held equally entitled to the sum of Rs.17,98,030.77



lying in the Account on 29.07.2009, around the time of demise of Late Prabhu Nath Singh. *It was thus, held that the Plaintiff was entitled to a sum of Rs.9,11,741/-, being half of the amount lying in the Account. However, since the Plaintiff had restricted her claim to Rs.8,99,015/-, she was held entitled only to the said amount.*

32. *In regard to the objection, that the claim was barred by limitation, the learned District Judge observed that the present case was not a simplicitor Suit for Recovery, but pertained to enforcement of the Plaintiff's entitlement in the money lying in the joint Account on the basis of the Will, for which there existed a continuing cause of action and there was no prescribed limitation period, unless one co-sharer is excluded from the property by the other.*

33. *Alternatively, even if it is held that Article 113 of the Schedule to the Limitation Act, 1963 would apply to a Suit for partition of movable property/money lying in a Bank Account, for which the prescribed limitation period is three years from the date on which the right to sue accrues; the right to sue would accrue only when the Defendant refused to give the Plaintiff her share in the amount, to which she was entitled.*

34. *The learned District Judge noted that no specific date of demand emerged from the Plaintiff's evidence, nor was any specific denial communicated to her. Rather, the Defendant himself had stated that no request had ever been made by the Plaintiff and, therefore, there was no occasion for refusal. It was thus, held that neither had the Plaintiff specifically demanded her 50% share earlier, nor had the Defendant expressly denied the same.*



35. At best, it could be inferred that the request for payment was made after issuance of the duplicate Passbook on 17.06.2013 or upon service of the Legal Notice dated 10.08.2013. Since the matter pertained to the rightful share of the Plaintiff in the money lying in the Account and was not merely a simplicitor Suit for Recovery, the learned District Judge held that limitation was liable to be reckoned either from 17.06.2013 or from 10.08.2013. Since the Suit had been instituted on 07.07.2014, it was held to be within limitation. **Accordingly, the Suit was decreed for a sum of Rs.8,99,015/- along with interest @ 6% per annum.**

36. Aggrieved by the said Judgment, the **present Regular First Appeal has been preferred.**

37. The *grounds of challenge* are that the Suit was barred by limitation under Article 113 of the Limitation Act, 1963, and that the learned Trial Court has erred in re-characterizing the Suit as one for Partition, merely to circumvent the bar of Limitation. It is contended that the Suit was essentially one for recovery of a definite amount allegedly withdrawn from the Bank Account and consequently, the right to sue accrued from the date of the alleged wrongful withdrawal and/or from the date when the Respondent admittedly became aware of the operation of the Account.

38. It is further contended that the Respondent's own Letter dated 04.09.2009, Ex.PW4/1, clearly evidences such knowledge and, therefore, the period of limitation commenced, at the very least, from the said date. The Suit had been instituted in 2014 and is, therefore, hopelessly barred by time.



39. The learned Trial Court erroneously applied the principle of “*demand and refusal*”, which is applicable to genuine Partition or co-sharer disputes, and not to a claim founded upon alleged misappropriation or wrongful withdrawal of funds. The learned Trial Court has further acted in derogation of the settled principle of *dominus litis*, by impermissibly re-characterizing a Recovery suit as one for partition, solely to avoid the bar of limitation. Reliance has been placed on Trojan & Co. Ltd. vs. N.N. Nagappa Chettiar MANU/SC/0005/1953, wherein the Supreme Court held that a case must be strictly construed on the basis of the pleadings and no relief can be granted on a case that was never pleaded or introduced by way of an amendment.

40. Reliance has also been placed upon Sopan Sukhdeo Sable vs. Assistant Charity Commissioner (2004) 3 SCC 137, wherein it was held that the Plaint must be read as a whole and cannot be reinterpreted, so as to alter its true import and character.

41. It is further contended that even if the registered Will dated 26.06.2007 executed by Late Sh. Prabhu Nath Singh is assumed to have been duly proved, the said Will was the subject matter of Probate Case No.120/2011, wherein Letters of Administration had been granted. It is submitted that the learned Trial Court materially erred in mechanically converting the directions contained in the Will, into a money decree without proper adjudication of the rights of the parties flowing from the testamentary disposition and without considering the principles governing testamentary succession.



42. The Will merely directed that the cash balances lying in Joint Account or Post Office Accounts, would devolve upon the respective joint holders thereof, and does not *ipso facto* create any fixed or quantified monetary liability. The learned Trial Court failed to adjudicate upon the nature of the Joint Accounts, the manner of their operation, the extent of contributions made by the parties, and the actual subsisting balance therein, while mechanically granting 50% of the amount as an entitlement, under the Will against the Appellant.

43. It is thus, contended that the impugned Judgment suffers from a fundamental error in converting a disputed testamentary claim into a decree for recovery, without proof of entitlement, in accordance with law.

44. The *testimony of DW-2, Smt. Seema Singh*, wife of the Appellant, was completely excluded, thereby seriously prejudicing the Appellant's case regarding the family Settlement. DW2 was partly cross-examined, but thereafter, failed to appear for further cross-examination, pursuant to which the defence evidence was closed on 08.08.2024. The partial cross-examination of DW2 contained material aspects pertaining to the alleged Settlement and the complete exclusion of her testimony on the ground of non-appearance, without granting the Appellant an opportunity either to re-examine the witness or to substitute the witness, has resulted in grave prejudice and miscarriage of justice and is violative of the principles of natural justice.

45. The learned Trial Court failed to properly appreciate the legal effect of the registered and probated Will dated 26.06.2007 and erred in granting relief without proper adjudication of the rights flowing from the



testamentary disposition. The Will merely directed that the cash balances lying in the Joint Accounts would devolve upon the respective joint holders, and that the Respondent was required to independently establish her entitlement in accordance with the terms of the Will and the surrounding factual matrix, including the nature and operation of the Account, the extent of contributions and the actual subsisting balance therein before granting the decree which has not been undertaken.

46. This approach is contrary to the law laid down in Bachhaj Nahar vs. Nilima Mandal (2008) 17 SCC 491, wherein the Supreme Court held that in Civil Suits, grant of relief is circumscribed by several factors such as pleadings, prayer, court fee paid, limitation, the parties to the Suit, *res judicata*, *estoppel*, acquiescence and non-joinder of cause of action of the parties.

47. The learned Trial Court failed to undertake proper adjudication of entitlement under the Will and that the findings returned are perverse, contrary to the weight of evidence and violative of the principles of natural justice, thereby warranting interference by this Court. Reliance has also been placed upon Ishwar Dass Jain vs. Sohan Lal, (2000) 1 SCC 434, wherein it was held that interference with findings of fact is warranted, where material or relevant evidence has not been considered and such non-consideration has materially affected the conclusion arrived at by the Court.

48. The learned Trial Court has failed to appreciate that the Defendant's denial of any demand, cannot simultaneously be used to defer limitation and to support the Respondent's claim, thereby, rendering the reasoning self-contradictory.



49. It is lastly contended that the learned Trial Court failed to apply a consistent standard of proof and subjected the Appellant's defence to a disproportionately higher threshold, while accepting the Respondent's case without strict scrutiny.

50. The impugned Judgment is further vitiated by inadequate and contradictory reasoning, non-consideration of relevant evidence and disregard of settled legal principles, resulting in a decision that suffers from patent non-application of mind.

51. Hence, a prayer has been made for setting aside the impugned Judgment and Decree.

Submissions heard and record perused.

52. The Plaintiff/Respondent had instituted the present Suit seeking recovery of Rs.8,99,015/- along with *pendent lite* and future interest, claiming the said amount as her entitlement under the Will dated 26.06.2007 executed by her father-in-law, Late Sh. Prabhu Nath Singh.

53. The case of the Plaintiff, in essence, was that Late Sh. Prabhu Nath Singh had, during his lifetime, executed a registered Will dated 26.06.2007, which already stands probated in duly instituted Probate proceedings. Under the said Will, the Defendant/Appellant and the Plaintiff/Respondent, being joint holders along with Late Sh. Prabhu Nath Singh in the concerned Bank Account, were entitled to the money lying therein upon his demise.

54. It is not in dispute that Late Sh. Prabhu Nath Singh maintained Savings Bank Account No.107001000001077 jointly in the names of himself, the Plaintiff/Respondent and the Defendant/Appellant. It is equally undisputed that Late Sh. Prabhu Nath Singh passed away on 01.08.2009,



leaving behind the aforesaid registered Will, exhibited as Ex.P2, which has neither been disputed nor challenged by either party. It is also a matter of record that the said Will already stands duly proved in Probate Case No.120/2011, wherein Letters of Administration were granted by the competent Court.

55. In this context, it would be apposite to refer to the relevant Clause contained in the Will dated 26.06.2007, which reads as under:

“The cash balance in joint accounts opened with the Banks and/or Post Office shall go and devolve upon the respective joint holder exclusively.”

56. The aforesaid Clause leaves little room for ambiguity. The intention of the Testator is manifest from the plain language used therein, that the money lying in the joint Accounts, were to devolve upon the surviving joint holders. The Appellant and the Plaintiff admittedly being the surviving joint holders in the concerned Bank Account, each became entitled to their respective share in the balance lying therein, upon the demise of Late Sh. Prabhu Nath Singh.

57. It is further not in dispute that, as on the date of demise of Late Sh. Prabhu Nath Singh, the said joint Account had a balance of Rs.17,98,030.77. In terms of the Will Ex.P2, the Plaintiff became entitled to 50% thereof. Though the Plaintiff was entitled to a marginally higher amount, she restricted her claim to Rs.8,99,015/- only. The learned Trial Court, therefore, rightly confined the decree to the amount actually claimed in the Suit.



58. The *principal contention* raised by the Appellant was that the Will had not been proved in accordance with Section 68 of the Indian Evidence Act, 1872. However, the said contention is wholly untenable. *Firstly*, for the simple reason that the execution and existence of the Will, were never denied by the Appellant. *Secondly*, and more importantly, the Will already stood duly proved in the Probate proceedings, wherein both, the Plaintiff as well as the Appellant, were parties. *Once Probate is granted, the Probate Judgment operates in rem and the Will is not required to be proved afresh.* The learned Trial Court, therefore, rightly observed that the requirement of fresh proof under Section 68 of the Evidence Act, did not survive in the facts of the present case.

59. The Appellant had also sought to contend that, notwithstanding the grant of Probate, the contents of the Will were still required to be independently proved. This argument, too, is devoid of merit. The operative Clause relating to devolution of monies in the joint Accounts is explicit and unambiguous and was never disputed by the Appellant. The Appellant neither challenged the interpretation of the said Clause nor disputed the existence of the amount lying in the Account at the relevant time. The learned Trial Court, therefore, rightly held that the Respondent was entitled to Rs.8,99,015/- as had been claimed by the Plaintiff in her Suit.

60. The *second challenge* raised by the Appellant, **pertains to limitation.** It has been vehemently argued that the Plaintiff had knowledge regarding the operation of the Account as early as September, 2009 and therefore, the Suit instituted in July, 2014 was hopelessly barred by limitation.



61. In this regard, it is not disputed that Late Sh. Prabhu Nath Singh passed away on 01.08.2009, and that Probate proceedings concerning the Will were initiated, thereafter. It is also not disputed that the Plaintiff had addressed Letter dated 04.09.2009 to the Bank informing about the demise of Late Sh. Prabhu Nath Singh and requesting that the Defendant/Appellant should not be permitted to operate the Account, without her consent. Pursuant thereto, the Bank issued communication dated 07.09.2009, exhibited as Ex.PW4/2, to the Appellant and his wife.

62. The contention of the Appellant was that the very issuance of the aforesaid communications demonstrated that disputes between the parties had already arisen in September, 2009 itself and, therefore, the right to sue accrued at that stage. It was contended that the Suit had been filed only on 07.07.2014 and is patently barred by limitation. However, this argument overlooks the true nature of the claim set up by the Plaintiff.

63. Though the present Suit has been framed as a Suit for Recovery, the claim of the Plaintiff arises from her entitlement under the Will Ex.P2. The Plaintiff has sought enforcement of her share in the money lying in the joint Account, in terms of the Will. The mere fact that the Plaintiff had written Letter dated 04.09.2009 to the Bank requesting that the Appellant should not operate the Account without her consent, does not establish that her claim had already been denied in the year 2009. The said Letter only reflects her apprehension regarding operation of the Account. Mere knowledge of operation of the Account, cannot be treated as denial of her entitlement under the Will.



64. Significantly, the Appellant himself stated in his evidence that the Plaintiff had never demanded any share from him and that there was no occasion for refusal. Once the Appellant himself has taken such a stand, he cannot simultaneously contend that limitation had already commenced in the year 2009, on account of refusal of the Plaintiff's claim.

65. The record shows that, at best, the Plaintiff first asserted her claim after obtaining the duplicate Passbook on 17.06.2013 and, in any event, through Legal Notice dated 10.08.2013. It is only thereafter, that a cause of action arose in favour of the Plaintiff. Prior to these dates, even as per the Defendant, the Plaintiff had not demanded her 50% share.

66. The learned Trial Court, therefore, rightly held that the cause of action arose only when the Plaintiff sought enforcement of her share under the Will and the same was denied or not honoured. The limitation period cannot automatically commence either from the date of demise of Late Sh. Prabhu Nath Singh or merely because the Plaintiff was aware about operation of the Account.

67. The contention of the Appellant that the learned Trial Court treated the present Suit as a "Partition Suit" is misconceived. The learned Trial Court merely examined the true nature of the Plaintiff's claim, namely, enforcement of her share in the money lying in the joint Account under the Will. No relief beyond the pleadings, was granted. It is well settled that mere existence of a right under a Will, does not by itself give rise to a cause of action. The right to sue arises only when such entitlement is asserted and is denied or not honoured. The learned Trial Court rightly held that the Suit instituted on 07.07.2014 was within limitation.



68. The reliance placed by the Appellant on Trojan & Co. Ltd. (supra) and Bachhaj Nahar (supra) is misplaced. The decree granted by the learned Trial Court is founded upon the pleadings, evidence and the express terms of the Will relied upon by the Plaintiff herself.

69. The contention regarding exclusion of testimony of DW-2, also does not assist the Appellant. DW-2 admittedly failed to appear for complete cross-examination and, therefore, her testimony could not have been relied upon. Further, no other evidence was produced by the Appellant/Defendant, to prove the Settlement. This alleged Settlement also, did not talk about the money lying in the joint Bank Account. Moreover, no documentary evidence was produced to establish the alleged family Settlement or relinquishment of rights by the Plaintiff. In any case, the alleged family Settlement, was not proved by any cogent documentary evidence.

70. This Court finds no illegality, perversity or material irregularity in the findings returned by the learned Trial Court warranting interference under Section 96 CPC.

71. **There is no merit in the present Appeal, which is hereby, dismissed.**

72. Pending Applications, if any, stand disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 21, 2026

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