IN THE COURT OF VIKAS GARG, DISTRICT JUDGE-05, EAST DISTRICT, KARKARDOOMA COURTS DELHI

CS No. 539/16

CNR No. DLET01-000433-2012

1. Shri Ashok Kumar
   S/o Late Shri Sohan Pal

2. Shri Suresh Chand
   S/o late Shri Sohan Pal

3. Smt. Usha Rani
   W/o Shri Rakesh Kumar
   D/o late Shri Sohan Pal

   All R/o H. No. 11, Ram Nagar Extn. 4,
   Krishna Nagar, Delhi-110051 …….Plaintiffs

Vs.

1. Smt. Yashoda @ Sakshi Thakur
   D/o late Shri Sohan Pal

2. Smt. Seema
   W/o late Shri Mahesh Chand

   Both R/o H. No. 11, Ram Nagar Extn. 4,
   Krishna Nagar, Delhi-110051.

3. Smt. Geeta **(Since deceased through LRs)**
   W/o Shri Kamal Mahajan
   D/o late Shri Sohan Pal
   R/o 186, Gali no. 7, New Lahore,
   Shastri Nagar, Delhi-110031 ……...Defendants

Date of Institution	**: 02.06.2012**
Date of Final arguments	**: 04.03.2025**
Date of Decision	**: 04.04.2025**
Final Decision	**: Preliminary Decree**

SUIT FOR PARTITION AND PERMANENT INJUNCTION

JUDGMENT

1. This judgment will determine the outcome of the plaintiffs' suit seeking partition and a permanent injunction.

2. The present suit was instituted on 26.06.2012. According to the death certificate, defendant no. 3, Ms. Geeta, passed away on 15.09.2012. Following her demise, her legal representatives were brought on record pursuant to an order dated 31.10.2017.

CASE OF THE PLAINTIFFS AS PER PLAINT:-

Briefly, the essential facts required for a fair adjudication of the present suit, as presented in the plaint, are as follows:

3. Smt. Resham Wati was the owner of the property located at No. 11, Ram Nagar, Extn-4, Krishna Nagar, Delhi-110051 (hereinafter referred to as the 'suit property'). She passed away intestate on 07.11.1999, survived by her husband, sons, and daughters. Her husband subsequently passed away on 13.10.2009. Plaintiffs No. 1 and 2 are her sons, while Plaintiff No. 3, Defendant No. 1, and Defendant No. 3 are her daughters. Defendant No. 2 is her daughter-in-law. Sh. Mahesh Chand, a son of Smt. Resham Wati and the husband of defendant no. 2, Smt. Seema, passed away in 2004. Defendant no. 1 initiated a suit against the legal representatives of Smt. Resham Wati seeking recovery of possession and other reliefs, but that suit was dismissed, and the appeal challenging the dismissal was also rejected. Subsequently, defendant

no. 2 threatened to sell the property. Under Section 15 of the Hindu Succession Act, each plaintiff and defendant is entitled to a 1/6th share of the suit property. The plaintiffs have sought a decree for partition and a permanent injunction to safeguard their rights.

<u>CASE OF THE DEFENDANTS AS PER WRITTEN STATEMENTS:-</u>

Briefly, the essential facts required for a fair adjudication of the present suit, as presented in the Written Statement, are as follows:

<u>Defendant no. 1's Written Statement (LRs of Defendant no. 3 adopted the written statement of the defendant no. 1):-</u>

4. The defendant asserts that the plaintiffs lack the locus standi to file the present suit, contending that defendant no. 1 is the rightful owner of the suit property by virtue of a registered WILL dated 17.08.1998, executed by Ms. Resham Wati. It is further stated that an earlier suit filed by the plaintiffs, seeking a declaration that the WILL and other documents be deemed null and void, was dismissed on 10.05.2005 by Sh. Rakesh Kumar, Learned Civil Judge, Karkardooma Courts, Delhi. Consequently, the defendant claims that the current suit is barred by the principle of res-judicata and should be dismissed. Additionally, it is alleged that the suit has not been properly valued for court fee and jurisdiction purposes, with the property's value exceeding the pecuniary jurisdiction of this court. The defendant also points out that wife and son of the plaintiff no. 2 had filed a false probate petition, which was dismissed. While replying to the plaintiff's contentions regarding the dismissal of her

suit, Defendant No. 1 claims that she was misled by her counsel, who filed an appeal on her behalf, and that she only learned of its dismissal upon receiving the plaint in this case. She intends to pursue appropriate legal action, including filing an appeal before the Hon'ble High Court. Regardless, she maintains that Ms. Resham Wati, from whom the plaintiffs also derive their claim, executed a valid WILL in her sound mind, duly registered with the Sub-Registrar's Office, Seelampur, Delhi, thereby entitling defendant no. 1 to sole ownership. On this basis, the defendant argues that the suit should be rejected under Order VII Rule 11 of the CPC.

The defendant further submits that she was defrauded by Smt. Seema, wife of Shri Mahesh, to whom she had granted a Power of Attorney. It is alleged that Smt. Seema colluded with the plaintiffs, failed to diligently pursue the earlier case, and did not inform defendant no. 1 of the appeal's dismissal. Having recently become aware of this, the defendant is taking steps to file a Second Appeal before the Hon'ble High Court. However, she asserts that the prior litigation's dismissal, based on the Suraj Lamps judgment, is inapplicable here, as all parties acknowledge Ms. Resham Wati's ownership, and no one has challenged her title. Given that Ms. Resham Wati executed a registered WILL in favor of defendant no. 1, and considering the dismissal of the plaintiffs' earlier suit for declaration by the court of Sh. Rakesh Kumar, the defendant contends that she alone is the owner of the suit property.

Defendant no. 1 refutes most of the remaining allegations in the plaintiffs' plaint and prays for the dismissal of the suit.

<u>Defendant no. 2' case:-</u>

Defendant no. 2 acknowledges that Smt. Resham Wati was the owner of the suit property and confirms the details outlined in paragraph no. 1 of the plaint. It is undisputed that Smt. Resham Wati, wife of the late Shri Sohan Pal, was the absolute owner of the property bearing No. 11, Ram Nagar Extension, Krishna Nagar, Delhi-110051, as specifically delineated in red in the attached site plan. Smt. Resham Wati passed away intestate on 07.11.1999, leaving behind the following legal heirs: (a) Shri Sohan Pal, her husband, who expired on 13.10.2009; (b) Shri Suresh Chand, her son, who is plaintiff no. 2; (c) Smt. Yashoda, her daughter, who is defendant no. 1; (d) Smt. Ashok Kumar, her son, who is plaintiff no. 1; (e) Smt. Usha Rani, her daughter, who is plaintiff no. 2; (f) Smt. Seema, her daughter-in-law, who is defendant no. 2 and whose husband, the late Shri Mahesh, passed away on 17.01.2004; and (g) Smt. Geeta, her daughter, who is defendant no. 3. Defendant no. 2 refutes the remaining allegations made by the plaintiffs in the plaint and seeks the dismissal of their suit.

<u>Issues:-</u>

5. Upon the completion of pleadings, the court on 16.07.2018 framed the following issues for trial:-

> *(i). Whether plaintiffs have any locus-standi to file the present suit in view of the registered will dated*

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17.08.1998 executed by Smt. Resham Wati? OPD

(ii) Whether the suit of the plaintiffs is property valued for the purposes of court fees and jurisdiction? OPD

(iii) Whether the suit is not maintainable in view of the petition for probate having been filed by the wife and son of the plaintiff no. 2 in view of the decision of the court of Ms. Vimla Makan, ld. ADJ? OPD

(iv) Whether plaintiffs are entitled for a decree of partition, declaration and permanent injunction, in their favour, as prayed? OPP

(v) Relief.

No other issues arose or were pressed at that stage.

Plaintiff Evidence:-

6. PW-1, Ms. Ruchika Sharma, Judicial Assistant, Record Room (Civil), Shahdara, Karkardooma Courts, tendered a copy of the judgment dated 24.01.2007 as Ex. PW-1/1 and a copy of the judgment dated 17.10.2011 as Ex. PW-1/2.

PW-1 was cross-examined by the counsel for the defendants.

PW-2, Sh. Govinda (Assistant Ahlmad) from the court of Ld. Aayushi Saxena, Ld. MM-05, Shahdara, Delhi, stated that as per the judicial record (case file pertaining to FIR No. 536/13, U/s 323/451/34 IPC, PS Jagat Puri, titled *State vs. Gaurav and Ashok*), Yashoda @ Shakshi Thakur, D/o Sh. Sohan Pal Thakur, is the complainant.

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PW-2 was then cross-examined by the defendants' counsel.

The plaintiff no.1 Sh. Ashok, testified as PW-3 and submitted his evidentiary affidavit, Ex. PW-3/A, during his examination-in-chief, in which he reiterated the contents of his plaint. He also relied upon the following documents:-

1. Copy of the property tax is Ex. PW-1/A as Mark A.
2. Copy of the GPA in favour of the mother as marked as Mark B.
3. Death certificate of the mother Smt. Reshma Wati as Ex. PW-1/C.
4. Copy of the complaint dated 27.01.2012 as Mark C.
5. Site plan of the property in question as Ex. PW-1/E.
6. Copy of the order of Ld. Civil Judge in suit no. 709/2006 dated 24.01.2007 as PW-1/1.
7. Copy of the order passed by Ld. ADJ in civil appeal no. 8/2010 dated 17.10.2011 as Ex. PW-1/2.

PW-3 has been duly cross-examined at length by the counsel for the defendants.

Defendants' Evidence:-

7. To support her case, defendant no. 1 Ms. Yashoda testified as DW-1 and submitted her evidentiary affidavit, Ex. DW1/A, during

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her examination-in-chief, in which she reiterated the contents of her written statement with some additions. She also relied upon the following documents:

1. Copy of Will in favour of Smt Saakshi Thakur same as Ex. DW1/1.
2. Copy of General Power of Attorney dated 17.08.1998 executed by Smt. Resham Wati Devi in favor of Smt. Saakshi Thakur as Ex. DW1/2.
3. Copy of agreement to sell executed by Smt. Resham Wati in favour of Smt. Saakshi Thakur as Ex. DW1/3.
4. Copy of receipt for Rs.1,80,000/- as Ex. DW1/4.
5. Copy of affidavit executed in favour of Smt. Saakshi Thaur as Ex. DW1/5.

She has been duly cross-examined by the counsel for the plaintiffs.

Ms. Seema testified as DW-2 and submitted her evidential affidavit, marked as Ex. DW-2/A, wherein she reaffirmed the contents of her WS with additional averments that defendant no.1 is the owner of the suit property.

She has been cross-examined at length by the counsel for the plaintiffs.

Arguments:-

8. **Arguments on behalf of the plaintiffs:-**

The learned counsel for the plaintiffs presented arguments aligned with the plaint, emphasizing key points to support their case. He referred to the cross-examination of DW-1, highlighting its significance. He asserted that the plaintiffs had successfully proven their claims, while defendant no. 1 had failed to substantiate any of her documents, including the WILL. He argued that the WILL lacks validity, as it bears the signature of only one witness, and no witness was produced to authenticate it. Additionally, he contended that the General Power of Attorney (GPA) and other documents do not confer any title upon defendant no. 1, challenging their legal standing. He pointed out a critical inconsistency: the documents relied upon by defendant no. 1 were purportedly executed on 17.08.1998 in Delhi, yet in her cross-examination, defendant no. 1 admitted to taking Ms. Resham Wati to Mumbai in 1996, where she remained until the first week of October 1998. The learned counsel questioned how these documents could have been executed in Delhi when Ms. Resham Wati was in Mumbai during that period. Concluding his submissions, he urged the court to grant the decree sought in the suit in favor of the plaintiffs.

Arguments on behalf of the defendant no. 1 and 3:-

The learned counsel for defendant no. 1 advanced arguments consistent with the written statement and evidential affidavit, asserting that defendant no. 1 is the rightful owner of the suit property based on the General Power of Attorney (GPA), Agreement to Sell, receipt, affidavit, and WILL. He argued that the restrictions imposed by the ***Suraj Lamp judgment*** do not apply to the documents held by defendant no. 1. He emphasized that both the WILL and GPA are registered documents, lending them legal weight. Additionally, he submitted that defendants no. 1 and 3 had adequately proven the authenticity of their documents. He pointed out that during cross-examination, the plaintiff acknowledged the photographs attached to these documents, reinforcing their credibility. In support of his case, he cited the judgment of the Hon'ble Delhi High Court in ***Hardip Kaur vs. Kailash & Anr., RFA*** No. 648/2006, decided on 18.05.2012. Concluding his submissions, he urged the court to dismiss the suit.

Arguments on behalf of the defendant no. 2:-

The learned counsel for defendant no. 2 presented arguments aligned with the written statement and sought the dismissal of the suit.

9. I have carefully listened to and considered the arguments presented by both parties, thoroughly reviewed the records, and taken into account the relevant laws and precedents.

Analysis & Issue-Wise Findings:-

10. **Issue no. 3:-**

The contention raised by defendants no. 1 and 3 is that the present suit is not maintainable due to the decision of Ms. Vimla Makan, Learned Additional District Judge, who dismissed the probate petition filed by the son of plaintiff no. 2. I find no merit in this argument. The son of plaintiff no. 2 is not a party to this suit.

Furthermore, the judgment in question was neither formally proved nor tendered as evidence in these proceedings. Even if it is considered, it does not support the claim that the present suit is barred. In that case, the probate petition sought validation of a WILL executed by Ms. Resham Wati concerning the suit property, under which the son of plaintiff no. 2 was named a beneficiary. The court declined to grant probate and dismissed the petition. It is difficult to see how that decision could bar the current suit. On the contrary, the dismissal of the probate petition provides a basis for initiating this suit. Had probate been granted, the maintainability of the present suit might have been called into question, but that is not the situation here. Based on the foregoing discussion, this issue is resolved in favor of the plaintiffs and against the defendants.

Issue no. 2:-

The defendant has contended that the suit is not properly valued for the purposes of court fee and jurisdiction. However, no evidence has been presented by the defendant to substantiate this claim. In the absence of such evidence, the valuation provided by the plaintiff must be accepted. Regarding the question of ad-valorem court fee, it is not required under the present facts and circumstances of this case, which involves a suit for partition and permanent injunction. The decision of the Hon'ble Delhi High Court in ***Smt. Poonam Bhanot Vs. Virender Sharma & Ors***. {CS (OS) 587/2017}, dated 15.01.2019, is relevant here. The court observed:

> "7. It is a general principle of law that in case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. Reference in this context may be had

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to the judgment of the Supreme Court in the case of ***Neelavathi & Ors. v. N. Natarajan & Ors.***, AIR 1980 SC 691 wherein it was held as follows:-

"8. Section 37 of the Tamil Nadu Court Fees and Suit Valuation Act relates to Partition Suits. Section 37 provides as follows:

> 37(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.
>
> 37(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common by a plaintiff who is in joint possession of such property, fee shall be paid at the rates prescribed.
>
> It will be seen that the court fee is payable under Section 37(1) if the plaintiff is 'excluded from possession of the property. The plaintiffs who are sisters of the defendants, claimed to be members of the Joint Family, and prayed for partition alleging that they are in joint possession. Under the proviso to Section 6 of the Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act, having at the time of the death an interest in the Mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided, joint family property, though not in the strict sense of the term. The

> general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled in law. The averments in the plaint that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiff had been excluded from possession"

8. Similarly, the Division Bench of this court in ***Saroj Salkan v. Sanjeev Singh & Ors.***, 155 (2008) DLT 300 (DB) held as follows:

> "13. It is settled law that in a suit for partition, the court fees to be paid if joint possession is pleaded by the plaintiff on the basis that he is the co-owner of the property sought to be partitioned, fixed court fees would be payable under Article 17(vi) of Schedule II of the Court

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Fees Act presuming the joint possession of the plaintiff even if the plaintiff is not in actual possession. It is because of the reason that in the case of co-owners, the possession of one in in law possession of all, unless from the averments in the plaint read as a whole, a clear case of ouster is made and in that situation the plaintiff is liable to pay ad-valorem court fees on the market value of this share as provided under Section 7(iv)(b) of the Court Fees Act notwithstanding the fact that it is also pleaded that the plaintiff was in constructive possession."

9. Learned counsel for the applicant also relies upon judgment of this court in ***Suresh Kapoor vs. Shashi Krishan Lal Khaona***, (supra) which was a case where the court had culled out the legal proposition as follows:-

"11. Relying on Sathappa Chettiar and Neelavathi, a learned Single Judge of this Court in Sushma Tiehlan Dalal v. Shivraj Singh Tehlan, 2011 (123) DRJ 91, culled out the following proposition of law:-

"11. The following legal proposition of law emerges from the above-referred decisions:

(i) In order to ascertain whether the suit has been property valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the Defendants;

(ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 17(vi) of Court-fees Act.

> (iii) If the averments made in the plaint show that the plaintiff has been completely ousted from possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property."

In this case, there are no allegations of the plaintiff being ousted from the suit property. Therefore, the plaintiff is not obligated to pay ad-valorem court fee. Based on the foregoing discussion, this issue is resolved in favor of the plaintiff and against the defendants.

Issue No. 1 and 4:-

It is an admitted fact that Ms. Reshamwati was the owner of the suit property. She passed away on 07.11.2019, while her husband predeceased her on 13.10.2009. The plaintiffs and defendants (with defendant no. 3, Ms. Geeta, having expired on 15.09.2012 and subsequently substituted by her legal heirs) are her surviving legal heirs. The plaintiffs have sought partition of the property, but defendant no. 1 has opposed their claim, asserting herself as the sole owner based on a WILL, GPA, Agreement to Sell, receipt, and affidavit. The discussion that follows is organized under different headings for clarity:

WILL:

Defendant no. 1 relied on the WILL Ex. DW-1/1, which was allegedly executed by Ms. Reshamwati in favor of defendant no. 1, Shakshi Thakur. However, the WILL is not valid as it bears the signature of only one witness, who was not even examined by defendant no. 1. Additionally, it carries the signature and seal of a notary public, Ramesh Vashist, but he too was not produced as a witness by defendant no. 1. The burden of proving the WILL lies with its propounder, and defendant no. 1 has failed to establish its proof and validity under the Indian Succession Act. The mere registration of the WILL does not exempt it from the legal requirement of proof. Consequently, defendant no. 1 cannot claim ownership based on this WILL. Furthermore, in an earlier suit (no. 709/06) filed by defendant no. 1 relying on the same WILL, her claim was dismissed, and the appeal against that decision was also rejected, attaining finality. This court cannot revisit the correctness of that judgment, which operates as res-judicata in the present case. Allegations of collusion and improper conduct by defendant no. 2 or the counsel in those proceedings have been raised, but no evidence supports these claims, and the court cannot rely on such unsubstantiated assertions.

GPA, Agreement to Sell, Receipt, and Affidavit:

The written statement of defendant no. 1 does not directly plead the GPA, Agreement to Sell, Receipt, and Affidavit. However, in evidence, defendant no. 1 relied on these documents to assert exclusive ownership of the suit property. During arguments, learned counsel for defendant no. 1 emphasized these documents, contending that the restrictions imposed by the **Suraj Lamp Case** do not apply since they were executed prior to that judgment. This argument lacks merit. The Supreme Court's ruling in ***Shakeel***

Ahmad vs. Syed Akhlaq Hussain (Civil Appeal No. 1598 of 2023, dated 01 November 2023) is pertinent here. The Court observed:

> "10 Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882."

In light of this, defendant no. 1 cannot claim title based on these documents. The contention of her counsel that they confer title despite the ***Suraj Lamp judgment*** holds no weight. The Delhi High Court's decision in ***Hardip Kaur vs. Kailash & Anr*** (RFA No. 648/2006, dated 18.05.2012), cited by counsel for defendants no. 1 and 3, is inapplicable given the Supreme Court's ruling in the ***Shakeel Ahmad Case***. Moreover, in the earlier suit filed by defendant no. 1, the court had already ruled that no title could be acquired through these documents, a decision that attained finality and operates as res-judicata here. This court cannot reassess that judgment's correctness. Vague allegations of fraud and collusion in obtaining that judgment lack evidentiary support and are therefore untenable.

Judgment in Ashok Kumar vs. Yashoda (Case No. 97/03):

In this suit, filed for declaration and permanent injunction, the plaintiff sought to have the WILL, Agreement to Sell, Cash Receipt, and GPA declared null and void and to restrain the defendants from dispossessing the plaintiff from the suit property. Declaring a WILL null and void is distinct from proving its validity. While the WILL may not have been declared null and void in that case, its proof and validity remain separate requirements, which Defendant No. 1, as its propounder, has failed to fulfill under the law, as discussed earlier. The dismissal of the plaintiff's suit for declaring the WILL null and void does not constitute res-judicata in this case. Regarding the GPA and other documents, although they were not declared null and void in that judgment, their legal effect was not analyzed. Even if valid, these documents do not independently confer title, as previously explained.

Non-Joining of Master Jai:

Defendant no. 1 stated in an evidentiary affidavit that her brother, Mahesh Chand Sisodia, left behind his wife, Seema, and a minor son, Jai. However, during cross-examination, the plaintiffs denied through a suggestion that Jai was Mahesh Chand Sisodia's son (noting a clerical error in the cross-examination referring to

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"Ramesh" instead). No objection regarding the non-joinder of necessary parties was raised in the written statement or pleadings. The written statement does not mention Jai as Mahesh's son. Defendant no. 2, Seema, who is Mahesh's widow, has not claimed in her written statement or testimony as a witness that she had a son named Jai with Mahesh, despite supporting defendant no. 1's case. No issue was framed on this point, and no arguments were advanced during the proceedings.

<u>Conclusion (issue no. 1 and 4):</u>

It is established that the suit property belonged to Ms. Reshamwati, and Defendant No. 1 has failed to prove her exclusive ownership. At this stage, it is relevant to refer to Sections 15 and 16 of the Hindu Succession Act, 1956, which are reproduced below:

> "**15. General rules of succession in the case of female Hindus.**
>
> (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-
>
> > (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
> >
> > (b) secondly, upon the heirs of the husband;
> >
> > (c) thirdly, upon the mother and father;
> >
> > (d) fourthly, upon the heirs of the father; and
> >
> > (e) lastly, upon the heirs of the mother.
>
> (2) Notwithstanding anything contained in sub-section (1),
>
> > (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the

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other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death. *"*

Accordingly, Plaintiffs No. 1, 2, and 3, along with Defendant No. 1 and the branch of Defendant No. 3, are each entitled to a 1/5th share of the property. Ms. Seema (defendant no. 2), however, is not entitled to any share in her mother-in-law's property as per Section 15 of the Hindu Succession Act.

Relief:-

11. Having considered the above, a preliminary decree for partition of the suit property is passed, assigning the following shares:

(a)	Shri Ashok Kumar:	1/5th share
(b)	Shri Suresh Chand:	1/5th share
(c)	Smt. Usha Rani:	1/5th share
(d)	Smt. Yashoda @ Sakshi Thakur:	1/5th share
(e)	LRs of deceased Smt. Geeta:	1/5th share

12. The parties are hereby restrained from alienating, transferring, or creating any encumbrance over the suit property, save and except with unanimous consent of all parties, until final disposal of the matter.

13. The Preliminary Decree Sheet shall be drawn accordingly.

14. The parties are directed to submit proposals for effectuating physical partition by metes and bounds as per the shares specified above.

15. Put for further proceedings on **17.07.2025.**

Pronounced in the open court

on 04.04.2025

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(Vikas Garg)
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