

18.05.2026

Pr. Plaintiff in person.

Defendant No.1 in person.

None for remaining defendants.

1. Perusal of record reveals that an application under Order VII Rule 11 CPC filed by defendants No.1, 2 and 5 bearing I.A. No. 2/2025 is pending adjudication. Reply of plaintiff is also on record.

2. Ld. Counsels for the parties have not appeared to address arguments. Record perused.

3. By way of instant application, the defendants No.1, 2 and 5 have sought dismissal of the suit on the ground that the defendant No.1 is the absolute owner of the suit properties by virtue of Will Deed, registered GPA executed by his father late Sh. Vinod Kumar in his favour and the plaintiff is merely a licensee in Flat No.103, First Floor, Sagar Kunj Apartment, Masjid Wali Gali, East School Block, Mandawali, Fazalpur, Delhi-110092, ad-measuring 74 sq. yards.

4. It is a settled proposition of law that for deciding the application under Order VII Rule 11 CPC only the averments made in the plaint and the documents annexed thereto are germane. The court cannot look into the defence put forth by the defendant. In the application, defendants No.1, 2 and 5 have sought rejection of plaint on twin grounds, i.e., no cause of

action is disclosed and the plaintiff has no locus standi as the suit properties are owned by the defendant No.1.

5. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

6. A perusal of the plaint reveals that the plaintiff has categorically mentioned that her husband, late Sh. Vinod Kumar, died intestate and she is entitled to 1/6th share in the suit properties. The plaintiff has disclosed material facts which constitute the necessary cause of action for institution of the present suit. So far as the claim of ownership as set up defendant No.1 is concerned, it is a matter of trial, moreover, it is a defence, which cannot be looked into at this stage of adjudication of application under Order VII Rule 11 CPC. Accordingly, the application in hand is without any merits and is, accordingly, dismissed.

7. An application under Order XXXIX Rules 1 & 2 CPC bearing I.A. No. 1/2026 is pending adjudication. Ld. Counsels for the parties have not appeared for addressing the arguments.

8. Record perused.

9. By way of instant application, the plaintiff has sought the relief that the defendants be restrained from dispossessing her from the suit properties, bearing (1) Flat No.103, First Floor, Sagar Kunj Apartment, Masjid Wali Gali, East School Block, Mandawali, Fazalpuri, Delhi-110092, ad-measuring 74 sq. yards;

(2) H.No.609/5, Indira Colony, School Block, Shakarpur, Mandawali, Fazalpur, Delhi-110092, ad-measuring 30 sq. yards;
(3) H.No. 609/6, Indira Colony, School Block, Shakarpur, Mandawali, Fazalpur, Delhi-110092, ad-measuring 40 sq. yards.
Further, ad-interim restraint order against creation of third party interest in respect of the aforesaid suit properties during the pendency of the instant suit has also been sought.

10. The case of the plaintiff is that her husband, late Sh. Vinod Kumar was the owner of the aforesaid properties, who died intestate, consequently, the suit properties are liable to be partitioned as the plaintiff has 1/6th share therein. The defendant No.1, per contra, claims himself to be the absolute owner of the suit properties by virtue of 'Will' dated 28.03.2012.

11. In order to be entitled to the relief of temporary injunction against forcible dispossession, first and foremost, the plaintiff had to show that she is in possession of the suit properties. In the statement recorded under Order X CPC, the plaintiff has admitted that she is not in possession of two properties bearing H.No. 609/5, Indira Colony, School Block, Shakarpur, Mandawali, Fazalpur, Delhi-110092, ad-measuring 30 sq. yards and H.No. 609/6, Indira Colony, School Block, Shakarpur, Mandawali, Fazalpur, Delhi-110092, ad-measuring 40 sq. yards. The plaintiff, admittedly, is in possession of only one property, i.e., Flat No.103, First Floor, Sagar Kunj Apartment, Masjid Wali Gali, East School Block, Mandawali, Fazalpuri, Delhi-110092, ad-measuring 74 sq. yards. The defendant claims that the plaintiff is in possession of the aforesaid property in the

capacity of a licensee. A person, in possession, cannot be dispossessed except by due process of law. Accordingly, the defendants are hereby restrained from dispossessing the plaintiff from property bearing No. Flat No.103, First Floor, Sagar Kunj Apartment, Masjid Wali Gali, East School Block, Mandawali, Fazalpuri, Delhi-110092, ad-measuring 74 sq. yards, till the final disposal of the present suit without following the due process of law.

12. So far as, the relief of temporary injunction against creation of third party interest is concerned, the plaintiff has admitted in her statement recorded under Order X CPC that defendant No.1 has already sold the property bearing H.No. 609/5, Indira Colony, School Block, Shakarpur, Mandawali, Fazalpur, Delhi-110092, ad-measuring 30 sq. yards.

13. It is a matter of trial as to whether late Sh. Vinod Kumar died intestate or defendant No.1 is the absolute owner of the suit property. The same can be decided only after the evidence is adduced by both the parties in support of their respective claims. It is in the interest of justice, that the status-quo qua the two properties be maintained till the final disposal of the present suit so as to avoid multiplicity of litigations. Accordingly, the defendants are, hereby, restrained from selling, alienating or creating any third party interest in the suit properties, i.e., H.No. 609/6, Indira Colony, School Block, Shakarpur, Mandawali, Fazalpur, Delhi-110092, ad-measuring 40 sq. yards and Flat No.103, First Floor, Sagar Kunj Apartment, Masjid Wali Gali, East School Block, Mandawali, Fazalpuri, Delhi-110092, ad-

measuring 74 sq. yards till disposal of the present suit. The application under Order XXXIX Rules 1 & 2 CPC stands disposed off. Nothing stated herein above shall tantamount to an expression of opinion on merits of the present case.

14. Vide order dated 16.11.2024, Ld. Predecessor had taken the amended plaint on record. Written statement to amended plaint has already been filed by defendants No.1, 2 and 5 on 28.02.2025. Till date, replication has not been filed. The right of plaintiff to file replication stands closed. Ld. Counsel for defendants No.3 and 4 had appeared on 30.01.2024 and had submitted that these defendants would not file any formal written statement in the instant matter. Thereafter, none is appearing on behalf of defendants No.3 and 4. The right of defendants No.3 and 4 to file written statement stands closed.

15. Pleadings of the parties are complete. On the basis of the pleadings of the parties, the following issues are framed:-

1. Whether the plaintiff is entitled to the relief of cancellation as prayed? OPP.

2. Whether the suit properties are liable to be partitioned, if so, in what manner and what would be the share of the parties? OPP.

3. Whether the plaintiff is entitled to relief of permanent injunction as prayed? OPP.

4. Whether the defendant No.1 is the absolute owner of the suit properties? OPD1 D2 and D5.

5. Relief.

16. No other issue arises or pressed for. List of witnesses be filed within 15 days.

17. Put up for PE/cross on 20.07.2026. Evidence by way of affidavit be filed and advance copy be supplied at least two weeks prior to the NDOH against acknowledgement.

(SHUCHI LALER)
District Judge-02 (East),
Karkardooma Courts/18.05.2026