

**IN THE COURT OF SH. AASHISH GUPTA, DISTRICT JUDGE-01,
NORTH EAST, KARKARDOOMA COURTS: DELHI**

CS No. 163/23

CNR No.DLNE01-001712-2023

In the matter of :-

Smt. Daya Gupta

W/o Sh. Makkhan Lal Gupta

D/o Late Sh. Ramesh Chand Garg

R/o H. No. J-283, J-Block, 3 ½ Pushta,

Gali No. 12 ½, Kartar Nagar, Delhi-110053

Also at:

H. No. 44/2606, Ground Floor,

Khasra No. 624, Gali No. 1,

Near Primary School, Sudama Puri,

Delhi-110053.

..... Plaintiff

Versus

1. Sh. Ashok Kumar (**now deceased**)
S/o Late Sh. Ramesh Chand Garg
through LRs:

(a) Smt. Manju

W/o Late Sh. Ashok Kumar

(b) Smt. Monika

W/o Sh. Amit Kumar

D/o Late Sh. Ashok Kumar

(c) Smt. Sweety

W/o Sh. Deepak

D/o Late Sh. Ashok Kumar

(d) Sh. Aditya Garg

S/o Late Sh. Ashok Kumar

(e) K. Laxmi
D/o Late Sh. Ashok Kumar
(through her mother namely
Smt. Manju being the natural guardian).

2. Sh. Vinod Kumar
S/o Late Sh. Ramesh Chand Garg

3. Smt. Chanda Devi (**now deceased**)
W/o Late Sh. Paushaki Lal
D/o Late Sh. Ramesh Chand Garg
through LRs:

(a) Ms.Soni
W/o Sh. Pramod
D/o Late Sh. Paushaki Lal &
Smt. Chanda Devi

(b) Vikas Garg
S/o Late Sh. Paushaki Lal &
Smt. Chanda Devi

(c) Sandeep
S/o Late Sh. Paushaki Lal &
Smt. Chanda Devi

All R/o H. No. J-283, J-Block,
3 ½ Pusta, Gali No. 12 ½, Kartar Nagar,
Delhi-110053.

4. Smt. Beena Gupta
W/o Sh. Bihari Lal Gupta
R/o H. No. B-2, Gali No. 2,
3 ½ Pusta, Kartar Nagar,
Delhi-110053.

..... Defendants

Date of institution : 08.06.2023
Arguments heard on : 01.04.2026
Date of Judgment : 10.04.2026

JUDGMENT

Brief Background of Case:

1. Ramesh Chand Garg and Mithlesh Devi had two sons namely Ashok Kumar and Vinod Kumar; and three daughters namely Chanda Devi, Beena Gupta and Daya Gupta.
2. Property bearing No. J-283, J-Block, 3 ½ Pusta, Gali No. 12 ½, Kartar Nagar, Delhi-110053, measuring 50 square yards as shown in red in site plan annexed with the plaint (hereinafter referred to as '**suit property**') is the subject matter of dispute herein.
3. It is an undisputed position between the parties that they are Hindu by religion and are governed by Hindu Law of Succession. It is also undisputed before this Court that Ramesh Chand Garg and Mithlesh Devi died intestate.
4. Ramesh Chand Garg died on 13.02.2007 while Mithlesh Devi died on 13.05.2023.
5. Out of the five children of Ramesh Chand Garg and Mithlesh Devi, two children namely Ashok Kumar and Chanda Devi have expired and they are represented before this Court through their legal heirs.

Plaintiff's case:

6. As per plaintiff, the suit property was originally owned by Ramesh Chand Garg and eventually it was transferred by him to his wife Mithlesh Devi. Mithlesh Devi died intestate and thus, plaintiff *inter alia* seeks 1/5th share in the suit property in the capacity of class-I legal heir of Mithlesh Devi. The other consequential reliefs of possession and injunction are also prayed by plaintiff.

Defence of LR's of D-1 [except D-1(c)] and D-2:

7. The said defendants filed a joint written statement and claimed that Mithlesh Devi had **orally transferred** the suit property to D-1 and D-2 and thus, they resist partition of the suit property on this count.

Defence of D-3 and D-4:

8. The said defendants have supported the case of plaintiff and have sought 1/5th share in the suit property.

Issues framed:

9. Based on pleadings of the parties, following issues were framed vide order dated 27.03.2024, which read as under:-

*Issue
nos.*

Issues

- (i) *Whether the plaintiff is entitled to preliminary decree of partition, as prayed for ? OPP*
- (ii) *Whether the plaintiff is entitled to final decree of partition, as prayed for ? OPP*
- (iii) *Whether the plaintiff is entitled to decree of declaration, as prayed for ? OPP*
- (iv) *Whether the plaintiff is entitled to decree of possession, as prayed for ? OPP*
- (v) *Whether the plaintiff is entitled to decree of permanent injunction, as prayed for ? OPP*
- (vi) *Whether the plaintiff is entitled to decree of mandatory injunction, as prayed for ? OPP*
- (vii) *Whether the deceased defendant no.1 and defendant no. 2 owners of suit property ? OPD*
- (viii) *Relief.*

Evidence led:

10. Plaintiff led her evidence and has examined herself as her only witness, detailed below:-

Particulars of witness	Nature of witness
PW-1/Daya Gupta.	Plaintiff herself. Sh reiterated her case by way of her affidavit in evidence Ex.PW1/A. She relied upon the following documents: 1.Copy of aadhar card of plaintiff [Ex.PW1/1 (OSR)]. 2.Copy of electricity bill of suit property [Mark A]. 3.Copy of electricity bill of second address of plaintiff [Mark B]. 4.Site plan of suit property [Ex.PW1/4]. 5.Copy of police complaint dated 01.06.2023 [Ex.PW1/5]. 6.Original postal receipt of complaint [Ex.PW1/6]. 7.The proof of delivery of complaint [Ex.PW1/7]. 8.Notice u/o 12 Rule 8 CPC and the postal

	receipts thereof [Ex.PW1/8]
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11. Plaintiff/PW-1 was duly cross-examined by the counsel for the defendants. After plaintiff's evidence, contesting defendants examined three witnesses detailed below:-

S. No.	Particulars of witness	Nature of witness
1.	DW1/Ms. Manju Garg.	She is D-1(a). She reiterated her case by way of her affidavit in evidence Ex.DW1/A. She relied upon copy of her aadhar card (Ex.DW1/1).
2.	DW2/ Sh. Vinod Kumar.	He is D-2. He reiterated his case by way of his affidavit in evidence Ex.DW2/A. He relied upon copy of his aadhar card (Ex.DW2/1).
3.	DW3/Sh. Bihari Lal Gupta.	He is husband of deceased D-4. He reiterated his case by way of his affidavit in evidence Ex.DW3/A. He relied upon copy of medical documents of D-4/Beena Gupta (Ex.DW3/1).

12. Aforesaid witnesses were duly cross-examined by the counsel for plaintiff.
13. Final arguments heard. Record perused.

Analysis and findings:

14. Based on the evidence led before this court, the issue-wise finding in the matter is as under:

***Issue
nos.***

Issues

- (i) ***Whether the plaintiff is entitled to preliminary decree of partition, as prayed for ? OPP***
- (ii) ***Whether the plaintiff is entitled to final decree of partition,***

as prayed for ? OPP

- (iii) Whether the plaintiff is entitled to decree of declaration, as prayed for ? OPP*
- (iv) Whether the plaintiff is entitled to decree of possession, as prayed for ? OPP*
- (v) Whether the plaintiff is entitled to decree of permanent injunction, as prayed for ? OPP*
- (vi) Whether the plaintiff is entitled to decree of mandatory injunction, as prayed for ? OPP*
- (vii) Whether the deceased defendant no.1 and defendant no. 2 owners of suit property ? OPD*

15. I propose to deal with the aforesaid issues together being inter-connected.
16. As per record, admittedly the suit property was in the name of Mithlesh Devi/mother of parties. The relationship between the parties before this Court is also admitted.
17. Now, the only contention of D-1 (through his LRs) and D-2 against partition was that purportedly late Mithlesh Devi had orally transferred the suit property to D-1 and D-2 during her lifetime.
18. But, the above defence of the contesting defendants is untenable in law. The suit property is of value of over Rs. 100/- and thus, without there being any written registered document by which the suit property could be given to any person, the same could not have been conveyed to any person including the parties before this court. Thus, the alleged oral transfer by Mithlesh Devi in favour of D-1 and D-2 is an untenable legal defence. Mithlesh Devi could only transfer the suit property to D-1 and D-2 by way of a

registered conveyance deed and not otherwise. Admittedly, no such document was executed by Mithlesh Devi in favour of her children and thus, the plea of oral transfer is not tenable.

19. The other argument is that defendants have been occupying the suit property for a very long time. This again cannot take away the statutory right of plaintiff, D-3 and D-4 in the suit property. Thus, on the death of Mithlesh Devi, succession opened and all her five children (and in turn persons claiming under the said five children) would be entitled to their share in the suit property as per Hindu Law of Succession with Mithlesh Devi dying intestate.
20. Thus, plaintiff, D-1 (whose interest is now represented by D-1(a) to D-1(e) being legal heirs of D-1); D-2; D-3 (whose interest is being represented by D-3(a) to D-3(c); and D-4 are entitled to 1/5th equal share in the suit property.
21. Accordingly, issue No. (i), (iii), (v) and (vii) under consideration are liable to be decided in favour of the plaintiff and against the defendants. It is ordered accordingly.
22. Issue no. (ii) pertains to drawing up of a final decree of partition. Issue no. (iv) pertains to handing over possession of the divided property to plaintiff. Considering the existing construction of the suit property as per site plan

Ex.PW1/4 and also keeping in mind the share to be awarded to the parties, a further inquiry on that aspect shall be necessary and thus, the question of drawing up of a final decree and handing over of possession of divided property is deferred.

23. Plaintiff has also prayed for mandatory injunction restraining the defendants or the persons claiming through them for removing their belongings from the 1/5th share of the plaintiff in the suit property. In my humble opinion the said mandatory injunction cannot be granted to plaintiff till the suit property is divided by metes and bounds as the parties are co-owners of suit property and thus, defendants cannot be directed to remove their articles from any portion of the suit property. Hence, the prayer (vi) of mandatory injunction is declined. Issue No. (vi) is decided accordingly.

Relief

24. In view of the findings returned above, plaintiff is declared to have 1/5th share in the suit property described in table-I below and parties are held entitled to their shares indicated in the table below.

TABLE-1		
Suit Property in the name of Late Mithlesh Devi: J-283, J-Block, 3 ½ Pusta, Gali No. 12 ½, Kartar Nagar, Delhi-110053, measuring 50 square yards (more specifically shown in site plan Ex.PW1/4).		
S. No. [A]	Legal heirs of Late Mithlesh Devi [B]	Share in the suit property. [C]
1.	Daya Gupta (daughter)/Plaintiff.	Area of 10 square yards.
2.	Ashok Kumar (deceased son)/D-1 Through legal heirs: D-1(a)/Manju (wife of Ashok Kumar) D-1(b)/Monika (daughter of Ashok Kumar) D-1(c)/Sweety (daughter of Ashok Kumar) D-1(d)/Aditya Garg (son of Ashok Kumar) D-1(e)/Laxmi (daughter of Ashok Kumar)	Area of 10 square yards. They shall jointly take equal share and would be entitled to 1/5th i.e. <u>2 square yards each</u> .
3.	Vinod Kumar (son)/D-2	Area of 10 square yards.
4.	Chanda Devi (daughter)/D-3 Through legal heirs: D-3(a)/Soni (daughter of Chanda Devi) D-3(b)/Vikas Garg (son of Chanda Devi) D-3(c)/Sandeep (son of Chanda Devi)	Area of 10 square yards. They shall jointly take equal share and would be entitled to 1/3rd i.e. <u>3.33 square yards each</u> .
5.	Beena Gupta (daughter)/D-4	Area of 10 square yards.

25. Plaintiff is also held entitled to a decree of permanent injunction thereby restraining the defendants or persons claiming under them from selling, alienating, mortgaging or creating any third party interest in the suit property bearing No. J-283, J-Block, 3 ½ Pusta, Gali No. 12 ½, Kartar Nagar, Delhi-110053, measuring 50 square yards to the extent of plaintiff's share in the said property till the same is divided by metes and bounds.
26. Parties to bear their own cost.
27. Let a preliminary decree sheet of partition and injunction be prepared accordingly. Site plan Ex.PW1/4 to form part of decree.

**Announced in the open court
on 10.04.2026**

**Aashish Gupta
District Judge-01, North-East
KKD Courts, Delhi**