

CS 38/26

ASHOK KUMAR Vs. MANJU AND ANR

16.03.2026

Present: Ld. Counsel for plaintiff.

1. On 04.02.2026, following order was passed:-

Fresh suit is received by way of assignment. It be checked and registered.

Present: Ld. Counsel for plaintiff.

1. Heard and perused the file.
2. Plaintiff herein claims to be owner of suit property and is *inter alia* seeking the relief of declaration which reads as under:

“Pass decree of declaration that partition of suit property has already been taken place during life time parents of plaintiff and husband of defendant no 1 and partitioned the suit property as shown in the site plan attached with plaint in equal proportion share ½ in favor of plaintiff and defendant no. 1.”

3. The aforesaid relief is premised on the ground that the suit property was the property of one Krishna Devi. She had three children namely Ashok Kumar/plaintiff, Vinod Kumar (since deceased; and who is now represented by his wife/D-1 and son Sumit Kumar), and Beena Devi. Husband of Krishna Devi is stated to have expired. I am told that parties are Hindu and it is not pleaded that Krishna Devi left any Will. This means that Krishna Devi essentially died *intestate* in 2008 and thus, her property would devolve in the share of 1/3rd each to her children.
4. Now, as per plaintiff, some partition during lifetime of Krishna Devi took place whereby plaintiff was given half share in the suit property and the other half share was to go to Vinod Kumar. Beena Devi is stated to have taken her share in the property in the form of money and gifts.
5. It is difficult to understand that how a partition can take place qua the suit property **during the lifetime of Krishna Devi herself?** If Krishna Devi had allowed her children to occupy different portions in the property, in law, it would only mean that Krishna Devi was allowing her children to occupy different portions in the property only as permissive

users and not as its owners. After Krishna Devi died, by law, each children of Krishna Devi would get 1/3rd share in the property (presuming that her husband/Jwala Prasad had pre-deceased her). Even if Jwala Prasad died later (on 11.12.2012 as pleaded in the plaint) and he also died *intestate*, his share in the property would get equally distributed between his children which would make children of Jwala Prasad and Krishna Devi entitled to 1/3rd share each.

6. But, in the present case, plaintiff is setting up a case whereby he pleaded that a purported partition took place **during lifetime of Krishna Devi and that he is entitled to half share in the property.** The same appears to be not possible in the facts noted above. Let plaintiff clarify on this aspect on next date.
 7. List on 16.03.2026.
2. In view of the above observations, Counsel for the plaintiff argued that at the stage of issuing a notice, Court should only consider the bare compliance of various provisions and should not go into the merits or the rights of the plaintiff bringing the case. It is his argument that if the case being set up by the plaintiff is not proved, the matter can be dismissed at a subsequent stage and therefore he requested the Court to issue summons.
 3. Without going into the merits of the submissions made by the Counsel for plaintiff, suffice is to say that if, a bare perusal of the plaint does not disclose any cause of action in favour of the plaintiff or the case of the plaintiff, on the face of it is not maintainable in law, such plaints should be nipped in the bud and the Court cannot close its eyes where no notice is required to be issued to the other side. If in a given case, plaintiff fails to plead a basic or prima facie violation of his rights, such cases do not merit any notice.

4. A bare perusal of order dated 04.02.2026 shows that plaintiff is setting up a case of partition which took place during the lifetime of his mother Krishna Devi. The same was her property and at that stage any of her children did not have any crystallized rights qua the suit property. At best, they had a mere hope/chance to succeed (spes successionis - see Section 6 (a) of Transfer of Property Act, 1882). Thus, if there was no right available with the children of Krishna Devi (during her lifetime) qua her property, there is no question of her children agreeing to settle the said property at that time amongst themselves.
5. Again, as noted in order dated 04.02.2026, if Krishna Devi had allowed her children to occupy different portions in the property, in law, it would only mean that Krishna Devi was allowing her children to occupy different portions in the property only as permissive users and not as its owners. After Krishna Devi died, by law, each children of Krishna Devi would get 1/3rd share in the property (presuming that her husband/Jwala Prasad had pre-deceased her). Even if Jwala Prasad died later (on 11.12.2012 as pleaded in the plaint) and he also died *intestate*, his share in the property would get equally distributed between his children which would make children of Jwala Prasad and Krishna Devi entitled to 1/3rd share each.
6. In the present case, plaintiff has set up a case that during the lifetime of his parents "*it was decided and agreed that Vinod Kumar (with D-1 and D-2 being successor in interest of Vinod Kumar) will get half share in the suit property after the death of Mother and half share shall be given to plaintiff and in future only partition wall will be raised in the future so as not*

disturbed existing possession of both the son" (see para 4 of the plaint).

7. Plaintiff wants a decree of declaration from this Court that partition of suit property had already taken place during the lifetime of his parents and husband of D-1 and thereafter, partition of the property be done with half share given to plaintiff and other half going to D-1 as LR of Vinod Kumar.
8. In my humble opinion, the same is not permissible in law as evidently, D-3 also has a share in the property and there could not have been any partition of the property during lifetime of parents of plaintiff in the manner pleaded. It was at best an arrangement made by Krishna Devi to allow occupation of different portions in her property by her children.
9. Thus, not only the present suit, as set up, is not maintainable, the plaint does not disclose a cause of action in favour of the plaintiff.
10. Accordingly, for the reasons recorded above, the plaint herein is rejected U/O VII Rule 11(a) and (d) CPC.
11. Let a decree sheet be prepared.
12. File be consigned to Record Room.

Aashish Gupta
DJ-01/NE/KKD/DELHI
16.03.2026