

19.02.2026

Present: Sh.Ashok Kumar, Ld. counsel for plaintiff with plaintiff.
Sh. Brijesh Sharma, Ld. counsel (through VC) for one of the
LRs of D-1 i.e. D-1(c)/Ram Prakash and D-3.
D-1 has already expired while the D-4 and D-5 are ex-parte.

IA no. 1/26 (for interim relief moved by plaintiff)

1. Reply to application u/O XXXIX Rule 1 & 2 CPC filed. Copy supplied.
2. Arguments heard. Record perused.
3. Plaintiffs have preferred the present application praying that this court should order the defendants to maintain *status quo* qua the suit property and direct the defendants not to create any third party interest therein.
4. For deciding the application, a brief background of the facts shall be relevant. Original plaintiffs i.e. P-1 (since deceased) and P-2 are sons of Babu Ram (original D-1 and since deceased) and Gomati Devi. D-2 to D-5 are the other children of Babu Ram and Gomati Devi.
5. Plaintiffs had sued Babu Ram/D-1 and their other siblings *inter alia* for partition relying upon four separate Wills all dated 09.02.2010 pleading that vide the said Wills area of 30 square yards each was given to plaintiffs and D-2 and D-3. It is their case that Gomati Devi died on 18.02.2013 and thus, now the plaintiffs are entitled to 60 square yards of area (with P-1 and P-2 being entitled to 30 square yards each) which should be given to them by partition.

6. The suit is resisted by the defendants on the ground that originally the property belonged to Babu Ram/D-1 (father of the plaintiffs) and he never executed any transfer papers in favour of Gomati Devi. Thus, it is their case that when Gomati Devi did not have title to the property in 2010, where is the question of she having bequeathed the suit property by way of four Wills to the plaintiffs or D-2 or D-3.
7. It was argued before this court that the transfer documents purportedly executed by Babu Ram in favour of Gomati Devi (based on which Gomati Devi may have got title from Babu Ram) are in the nature of unregistered GPA, agreement to sell etc and therefore, the said documents even if presumed to have been actually executed by Babu Ram cannot give title to Gomati Devi qua the suit property.
8. **It was vehemently argued that while Gomati Devi died in 2013, Babu Ram/D-1 was alive till 2024 and since Gomati Devi herself traces her title from Babu Ram, where is the question of she being competent to transfer the suit property to plaintiffs or D-2 or D-3.** This is because, as per the case set up by the plaintiffs, Gomati Devi only held unregistered GPA, agreement to sell dated 18.11.1993 in her name which cannot give her any right, title or interest in the suit property.
9. On the other hand, counsel for plaintiff argued that plaintiffs have a valid Will in their name and therefore, the defendants should be restrained from creating any third party interest in the suit property.
10. I may note that as on date, only D-3 is contesting the matter in his personal capacity and also in the capacity of LR of D-1. Other defendants have chosen to remain ex-parte.

11. In my humble opinion, the present application is liable to fail. As per the case set up by the plaintiffs themselves, admittedly, Babu Ram/D-1 was the original owner of the suit property. He purportedly executed some unregistered GPA, agreement to sell etc dated 18.11.1993 in favour of his wife Gomati Devi. Presuming any such documents were executed, they themselves cannot give any right, title or interest to Gomati Devi so as to execute any Will on 09.02.2010 in favour of her sons so as to transfer title of the property covered under the said Wills to her sons on her death. Thus, *prima facie*, it appears that when Gomati Devi died in 2013, no title could go to the plaintiffs on the basis of two separate Wills being set up by the plaintiffs in their favour (both dated 09.02.2010). This is more so because in 2013, Babu Ram/D-1/admitted original owner of the property was alive.

12. Since there is no *prima facie* case in favour of plaintiffs, there is no question of considering balance of convenience or irreparable loss (the other essential ingredients for deciding an application u/O XXXIX Rule 1 & 2 CPC). Accordingly, the present application is dismissed. **Interim orders granted on the last date stands vacated.**

CS 35/18

13. Summons sent to witness Ashok Kumar have come back with the report that no person by the said name resides at the address given. Let *dasti* summons be given, at the request of counsel for plaintiff, to serve Ashok Kumar. Fresh address of Ashok Kumar, if any, be also filed. Let fresh summons be also sent to Ashok Kumar at the said

address to be filed. This is the last opportunity for the plaintiff to conclude his evidence.

14.List for PE on 24.04.2026.

AASHISH GUPTA
DJ-01/NE/KKD/DELHI
19.02.2026