

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

**CS No. 229/21
CNR No.DLNE01-003237-2021**

In the matter of :-

Khurshid
S/o Late Sahab Ali
R/o H. No. E-16, K-468,
T-Huts, New Seelampur,
Delhi-110053

.....Plaintiff

VERSUS

1. Shakir Ali
S/o Late Sahab Ali
R/o A-386 (Old No. A-295),
Gali Bank Wali, Gali No. 24,
Chauhan Bangar,
Delhi-110053.
2. Anisa
D/o Late Sahab Ali
W/o Munna
R/o D-132, JJ Colony,
Palam Gaon, Sec-7,
Delhi.
3. Shahana
W/o Late Sabir Ali
R/o A-386 (Old No. A-295),
Gali Bank Wali, Gali No. 24,
Chauhan Bangar,
Delhi-110053.
4. Saima

D/o Late Sabir Ali
R/o A-386 (Old No. A-295),
Gali Bank Wali, Gali No. 24,
Chauhan Bangar,
Delhi-110053.

5. Sana

D/o Late Sabir Ali
R/o A-386 (Old No. A-295),
Gali Bank Wali, Gali No. 24,
Chauhan Bangar,
Delhi-110053.

6. Sameer

S/o Late Sabir Ali
R/o A-386 (Old No. A-295),
Gali Bank Wali, Gali No. 24,
Chauhan Bangar,
Delhi-110053.

7. Saqib (minor son through his mother Shahana)

S/o Late Sabir Ali
R/o A-386 (Old No. A-295),
Gali Bank Wali, Gali No. 24,
Chauhan Bangar,
Delhi-110053.

8. Kaniza

D/o Late Sahab Ali
W/o Mushtak
R/o D-132, JJ Colony,
Palam Gaon, Sec-7,
Delhi.

9. Shakila

D/o Late Sahab Ali
W/o Babu Shah
R/o H. No. 2738, Gali No. 22 ½,
New Mustafabad,
Delhi-110094.

10. Zakir Ali
S/o Late Sahab Ali
R/o A-386 (Old No. A-295),
Gali Bank Wali, Gali No. 24,
Chauhan Bangar,
Delhi-110053.
11. Mustakima
D/o Late Sahab Ali
W/o Firoz
R/o Firoz Masale Wale,
H. No. Gali Meera Baba,
Near Jain Mandir/Kabristan,
Bangali Colony, New Seemapuri,
Delhi.Defendants

Date of institution : 23.09.2021
Arguments heard on : 21.04.2026
Date of Judgment : 25.04.2026

JUDGMENT

1. Late Sahab Ali (died some time in 1991) and late Khatoon Begum (died on 07.04.2021) had four sons (plaintiff, D-1, one Sabir Ali and D-10) and four daughters (D-2, D-8 to D-10).
2. Sabir Ali (one of the sons of Sahab Ali and Khatoon Begum) died about 13 years ago from the date of filing of the suit. His wife and children are arrayed as D-3 to D-7 in this suit.
3. Thus, while D-1, D-2, D-8 to D-11 are siblings of plaintiff, D-3 to D-7 are the legal heirs of plaintiff's brother Sabir Ali.
4. Plaintiff claims that his father **Sahab Ali** was owner of property bearing No. A-386 (old No. A295) Gali Bank Wali, Gali No. 24

measuring 25 sq. yds at Chauhan Bangar, Delhi-53 (hereinafter referred to as 'suit property') and despite his request made to defendants, his share is not being given to him. Thus, he *inter-alia* wants partition of the same and claims to have 2/12th share in the property. Additionally, he has also prayed for a consequential injunction restraining the defendants from creating any third party interest in the suit property.

Case of Defendants:

5. Two separate written statements were filed by defendants. The first written statement was filed jointly by D-1, D-6, D-7 and D-10. The second written statement was jointly filed by D-2 to D-5, D-9 and D-11. D-8 did not file any written statement.
6. In both the written statements, a common line of defence is taken. It is claimed that the suit property was not the property of Sahab Ali but in fact, it was an oral gift made by Late Chameli Shah to Mrs. Khatoon Begum. In the two written statement filed by the defendants, it is claimed that Mrs. Khatoon Begum is the mother of the parties (wife of Sahab Ali) and she received the suit property as a gift from her father namely Chameli Shah. It is further claimed in the said written statements that there is another property of Mrs. Khatoon Begum (since deceased) i.e. F16, A-467, New Seelampur, Delhi-53 alongwith the suit property and sometime in 1991, an oral family settlement took place between the plaintiff and the defendants whereby plaintiff got the said property i.e. F-16, A-467, New Seelampur, Delhi-53 and the suit property fell in the share of

defendants. It is further claimed that plaintiff surrendered all his rights and title in the said suit property thereafter.

7. No replication to the said claim was filed by plaintiff. It is also pertinent to note that in this case plaintiff has not placed on record even a single document to show that the suit property is of his father Late Sahab Ali. From the perusal of the plaint, it is not even clear as to how the said father of plaintiff acquired ownership of the suit property. I shall come back to this aspect of the matter in a little while.

Issues Framed

8. Based on pleadings of the parties, following issues were framed vide order dated 30.11.2024, which read as under:-

Issue nos.

Issues framed

- (i) *Whether plaintiff is entitled to a decree of partition as prayed for in prayer (a)? OPP*
- (ii) *Whether plaintiff is entitled to a decree of permanent injunction as prayed for in prayer (c)? OPP*
- (iii) *Whether any oral family settlement took place between the plaintiff and the defendants in 1991 whereby plaintiff got property bearing No. F-16, A-467, New Seelampur, Delhi-110053 (belonging to Mrs. Khatoon Begum) and in pursuance thereto the suit property fell in the share of defendants? If yes, its effect? OPD*
- (iv) *Relief*

Evidence Led

9. Plaintiff himself stepped in the witness box as PW-1 and placed reliance on a site plan Ex.PW1/1; his aadhar card Ex.PW1/2; and a photograph stated to be of the suit property Ex.PW1/3.

10. It is pertinent to note that after filing of written statements noted above, all defendants (except D-8), on various dates, stopped appearing and they were eventually proceeded ex-parte. D-8 never filed any written statement and the matter was tried ex-parte qua each of the defendants.
11. Final arguments heard. Record perused.
12. Based on the evidence led before this court, the issue-wise finding in the matter is as under:

Issue No. (i) & (ii)

- (i) Whether plaintiff is entitled to a decree of partition as prayed for in prayer (a)? OPP**
&
- (ii) Whether plaintiff is entitled to a decree of permanent injunction as prayed for in prayer (c)? OPP**

13. I propose to deal with the aforesaid issues together being inter-connected.
14. In this case plaintiff has sued the defendants for 2/12th share in the suit property. He does not specify in his plaint or in his evidence as to which school of Muslim Law shall apply to the facts of this case. He does not say in his evidence as to whether he and the defendants are *Shia* Muslims or *Sunni* Muslims. Thus, without this basic pleading/evidence, which school of Muslim Law shall govern principles of inheritance cannot be decided by this court.
15. Again, save and except the oral plea of the plaintiff that his father

Sahab Ali was the owner of the suit property, he has not placed on record even a single document to show that the suit property is of his father Late Sahab Ali. From the perusal of the plaint or plaintiff's affidavit in evidence Ex.PW1/A, it is not even clear as to how the said father of plaintiff acquired ownership of the suit property. Despite specific query of this Court to the Counsel for the plaintiff in this regard, no answer was forthcoming from the plaintiff. Thus, only an oral assertion is made by the plaintiff qua the ownership of Late Sahab Ali.

16. Counsel for the plaintiff submitted that the ownership documents of the suit property are in possession of defendants. Presuming the same to be true, it was incumbent upon the plaintiff to cause discovery/production of the said documents by serving appropriate interrogatories/discovery notice on the defendants so that the initial onus of the plaintiff could be discharged. Nothing of this sort was done by the plaintiff in this regard.
17. As far as plaintiff's case is concerned, in the absence of any document to even *prima-facie* show that the suit property belongs to Sahab Ali, it is difficult to say that plaintiff would be entitled to decree of partition and consequential injunction only on the basis of his oral testimony. As per plaintiff's own case, he purportedly visits the property regularly. This shows that admittedly plaintiff is not in physical and actual possession of the suit property and it is not clear from the record since when he has been out of possession.
18. In my opinion, before any decree of partition and consequential

injunction could be passed in favour of plaintiff, it was necessary for the plaintiff to specify as to which school of Muslim Law shall govern the question of inheritance qua the estate of his father Sahab Ali. It was necessary for him to then demonstrate that the said property actually belongs to his father Sahab Ali by at least attempting production of documents in favour of his father. He did not make any such attempt. He appears to have been out of possession for a very long period of time and does not even choose to say the period since when he has been out of possession. It is not even clear as to how he claims to have 2/12th share in the suit property. Neither from the record nor from the arguments made, it can be deduced as to what forms the basis of plaintiff's claim to the suit property to the extent claimed. Thus, in my humble opinion, the bald and oral testimony of plaintiff that he has a share in the suit property is not sufficient to discharge the onus of proof qua the issues under consideration.

19. Accordingly, the issues under consideration are decided against the plaintiff.

Issue No. (iii)

(iii) Whether any oral family settlement took place between the plaintiff and the defendants in 1991 whereby plaintiff got property bearing No. F-16, A-467, New Seelampur, Delhi-110053 (belonging to Mrs. Khatoon Begum) and in pursuance thereto the suit property fell in the share of defendants? If yes, its effect? OPD

20. The onus of this issue was of defendants to discharge. No evidence

was led before this court to demonstrate any oral family settlement or to prove that in pursuance thereto, the suit property fell in the share of defendants. Thus, in the absence of any evidence, the issue under consideration is decided against the defendants.

Relief

21. In view of the findings returned while deciding issue no. (i) & (ii), the suit fails. It is dismissed.
22. Parties to bear their own cost.
23. Let a decree sheet be prepared.

**Announced in the open court
on 25.04.2026**

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