

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

In the matter of

**CS No. 164/25  
CNR No. DLNE010012512025**

Mukesh Kumar  
S/o Late Sh. Babu Lal  
R/o H.No. X-254/39-C,  
Gali No. 5, Khasra No. 740,  
Brahampuri, Delhi - 110053

..... Plaintiff

versus

1. Gaurav  
S/o Late Sh. Babu Lal  
R/o H.No. X-254/39-C,  
Gali No. 5, Khasra No. 740,  
Brahampuri, Delhi - 110053
2. Smt. Vandana  
D/o Late Sh. Babu Lal  
W/o Sh. Pramod Kumar  
R/o House No. E-41,  
Gali No. 3, E-Block, Shastri Park,  
Delhi - 110053
3. Smt. Lalita  
D/o Late Sh. Babu Lal  
W/o Sh. Shanu  
R/o H.No. X-254/39-C,  
Gali No. 5, Khasra No. 740,  
Brahampuri, Delhi-110053
4. Smt. Neha  
D/o Late Sh. Babu Lal

W/o Sh. Tejveer Chaudhary  
R/o H.No. X-254, Gali No. 7,  
Near Shiv Mandir, Brahampuri,  
Seelampur, PO Seelampur,  
District North-East,  
Delhi - 110053

..... Defendants

**Date of institution :** 08.05.2025  
**Reserved on :** 25.03.2026  
**Date of Decision :** 01.04.2026

### **JUDGMENT**

1. **Brief facts:** Plaintiff has sued his siblings i.e. brother (D-1) and sisters (D-2 to D-4) seeking 1/5th share by way of partition in property bearing House No. X-254/39-C, Gali No. 5, Khasra No. 740, Brahampuri, Delhi-110053 measuring 38 sq yards (hereinafter referred to as '**suit property**' and more specifically shown in the site plan annexed to the plaint).
2. Plaintiff has also prayed for a decree of permanent injunction, seeking to restrain the defendants from creating any third party interest in the suit property.
3. As per plaintiff, suit property was in the name of Kusum Lata (mother of parties), who expired on 27.06.2022. Their father Babu Lal is stated to have also expired on 12.04.2020.
4. It is plaintiff's case that Kusum Lata died intestate and thus, in the capacity of class-I legal heir under Hindu Law of Succession, plaintiff is entitled to 1/5th share in the suit property.

5. It is pertinent to note that D-1 never filed his written statement despite entering appearance through Counsel and eventually his right to file written statement was closed vide order dated 10.09.2025.
6. The other defendants i.e. D-2 to D-4 appeared in Court on 10.09.2025 and submitted that they are supporting the case of the plaintiff and want the suit property to be partitioned. Their signatures in this regard was also taken on the order-sheet dated 10.09.2025.

**Evidence led**

7. To prove his case, plaintiff led evidence detailed below:-

S. No.	Particulars of witness	Nature of witness and documents relied.
1.	PW-1/Mukesh Kumar	<p>Plaintiff himself. He reiterated his case by way of affidavit in evidence Ex. PW1/A</p> <p>He relied upon the following documents:</p> <ol style="list-style-type: none"> <li>1. Copy of aadhar card of plaintiff - <b>Ex.PW1/1 (OSR).</b></li> <li>2. Copy of death certificate of deceased Babu Lal - <b>Ex. PW1/2 (OSR).</b></li> <li>3. Copy of death certificate of deceased Kusum Lata- <b>Ex. PW1/3 (OSR)</b></li> <li>4. Copy of GPA executed between Sh. Vijay Kumar and Smt. Kusum Lata - <b>Ex. PW1/4 (OSR).</b></li> <li>5. Copy of agreement to sell executed between Vijay Kumar and Smt. Kusum Lata - <b>Ex. PW1/5 (OSR).</b></li> <li>6. Copy of possession letter executed</li> </ol>

		<p>between Vijay Kumar and Smt. Kusum Lata - <b>Ex. PW1/6 (OSR)</b>.</p> <p>7. Copy of payment receipt issued by Vijay Kumar in favour of Kusum Lata- <b>Ex.PW1/7 (OSR)</b>.</p> <p>8. Copy of Will executed by Sh. Vijay Kumar in favour of Kusum Lata - <b>Ex.PW1/8 (OSR)</b></p> <p>9. Copy of site plan of suit property - <b>Ex. PW1/9</b>.</p>
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8. D-1 neither filed written statement nor did he cross-examine PW-1/plaintiff. Since, he never filed any written statement, no DE was led on his behalf.
9. Final arguments heard. Record perused.

### **Analysis and findings**

10. Counsel for plaintiff argued that the mother of the parties namely Kusum Lata was owner of the property based on GPA, agreement to Sell, Will etc. Ex.PW1/4 to Ex. PW1/8. It was argued that the fact that Kusum Lata was the owner is not disputed by any of the defendants and thus, on her death, each of her five children are entitled to 1/5th share each in the suit property.
11. D-2 to D-4 appeared physically and supported the said submission made on behalf of plaintiff.

12. But, Counsel for D-1 argued that the documents relied upon by the plaintiff are unregistered documents which cannot be treated as documents of title. It was his argument that since plaintiff has not proved the title of Kusum Lata on record, plaintiff is not entitled to any decree of partition or consequential injunction.
13. On Court query as to what is the status of D-1 in the property, Counsel for D-1, on instructions, submitted that D-1 is an *encroacher* in the property.
14. It is pertinent to note that D-1, during arguments, does not dispute that Kusum Lata was mother of the parties or the parties before this Court are siblings.
15. It is pertinent to note that the entire testimony of the plaintiff that his mother Kusum Lata was the owner of the property; that she died intestate on 27.06.2022; that she left behind five legal heirs; **and that the physical possession of the suit property is with plaintiff and D-1 (with D-2 to D-4 i.e. the daughters of Kusum Lata are living in matrimonial house)** have gone unrebutted and unchallenged. As already noted, D-1 never cross-examined the plaintiff on the aforesaid aspects.
16. Now, as far as the contention of D-1 that the title documents Ex. PW1/4 to Ex. PW1/8 are unregistered documents which cannot be treated as conveyance deed to give absolute title to Kusum Lata is concerned, the same is correct. But, even though the said documents cannot give title of the suit property to Kusum Lata as

they are not to be treated as conveyance deed in her favour, still, the said documents can be read to show possession of Kusum Lata qua the suit property. As per the said documents executed in March 2010, Kusum Lata came in possession of the suit property in March 2010.

17. As per the unrebutted testimony of plaintiff, it appears that since thereafter Kusum Lata remained in possession and eventually died intestate on 27.06.2022. This shall mean that at least on the date of her death, she was in settled possession of the suit property for a considerable period of time running in excess of 12 years. Thus, even if the title documents relied upon by plaintiff are not to be treated as documents of title, still, based on evidence, Kusum Lata had acquired possessory title in the suit property by the time she died.
18. Thus, on her death, the said possessory title in the suit property would then pass on to her legal heirs as per law of Succession. Thus, on 27.06.2022, succession opened and the suit property devolved in five equal shares to the five children of Kusum Lata i.e. the parties herein.
19. Thus, in my humble opinion, the suit property herein is liable to be partitioned with each of the parties herein entitled to 1/5th share each. Since, plaintiff has been found to have a share in the suit property and since plaintiff's claim that defendants are trying to create third party interest in the suit property has gone unrebutted,

plaintiff is also entitled to a decree of permanent injunction restraining the defendants or any person claiming through them from selling, parting with possession, alienating, transferring or creating any third party interest in the suit property till the suit property is physically divided by metes and bounds.

20. Accordingly, let a preliminary decree of partition be drawn with each of the parties to the suit entitled to 1/5th share each in the suit property i.e. property bearing House No. X-254/39-C, Gali No. 5, Khasra No. 740, Brahampuri, Delhi-110053 measuring 38 sq yards.
21. Site plan Ex. PW1/9 to form part of preliminary decree.
22. A decree of permanent injunction in the manner indicated in para 19 above be also drawn.

**Announced in the  
open Court on 01.04.2026**

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