

24.04.2026

Present: Ms. Sonia and Ms. Anita Kashyap, Ld. Counsel for
plaintiff with plaintiff.
D-2, D-3 and D-4 in person.

1. In this suit, *inter alia* a preliminary decree of partition was passed by this Court vide judgment dated 01.04.2026. The same reads as under:-

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 un rebutted, 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.*

2. Despite opportunities, parties have not filed any affidavit before this Court indicating the manner in which the aforesaid property can be partitioned.

3. D-4 submits that she wants to purchase the share of other parties.

4. As per record, there are a large number of stake holders qua the suit property and the area of the property is only 38 sq yards. The

construction of the property, as seen from the site plan Ex. PW1/9 shows that the suit property consists of three floors.

5. Now, if I consider the area of the property and the number of the stake holders, partition of suit property by metes and bounds is impractical in this case. This is because, a horizontal partition of the property is not possible as there are only three floors in the property with 5 stake holders claiming. The vertical partition would lead to a very small area measuring about 7.6 sq yards being given to the parties which would leave no room for any of the parties to actually use the property.
6. Now, if I consider the above factual scenario, the only possible way to equitably partition the suit property is by putting the property to auction with *inter se* bidding being allowed between the parties so that one or more of the share holders could jointly or severally buy the share of the other.
7. **Thus, keeping in mind the overall facts and circumstances of the case, let a final decree of partition be prepared with direction to put the property to auction. Site plan Ex. PW1/9 shall form part of final decree.**
8. The parties would have the first right to participate in the said auction and only if they fail to purchase the share of the other, either jointly or severally (as per highest price offered to purchase the share of the other over and above the valuation arrived at as per circle rate applicable to the area where the property is located), the property shall be put to sale by way of public auction. In such scenario, parties would get the sale proceeds as per their entitlement in terms of preliminary decree dated 01.04.2026, subject to costs, if any.
9. **Before the final decree of partition is drawn, parties are directed to place on record the non judicial stamp papers of requisite amount, as**

per Article 45 of Indian Stamp Act 1899 in accordance with their shares. In this regard, I may place reliance on the Full Bench judgment of the Hon'ble High Court of Delhi in the matter of '**Indu Singh and Anr. Vs. Prem Chaudhary and Ors'** O.Ref No. 2/18 in CS OS No. 1098/2005 decided on 11.05.2018.

10. If one party or more than one party fails to deposit the non judicial stamp papers of their respective shares, then the other party(ies) is/are at liberty to file the non judicial stamp paper of the value of the defaulting party and the amount so spent by such party(ies) shall be recoverable as cost and the auction amount of the defaulting party(ies) shall be reduced accordingly against the said cost and shall be paid to the party who had borne the expenses of defaulting party.
11. Accordingly, the Final Decree be drawn upon only on the submission of the requisite stamp papers.
12. It is clarified by way of abundant caution that the direction is for submission of stamp papers and **not Court Fees.**
13. I may note that while passing the preliminary decree, a decree of permanent injunction was also passed against defendants or any persons 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. The said relief is modified to the extent that defendants or any person claiming through them are restrained from selling, parting with possession, alienating, transferring or creating any third party interest in the suit property to the extent of plaintiffs' share till the auction is done in the aforesaid manner and the respective parties get their share from the sale price. The said modified relief shall also form part of final decree.
14. With the said directions, nothing remains to be adjudicated in the present matter.

15. File be consigned to Record Room.

Aashish Gupta
DJ-01/NE/KKD/DELHI
24.04.2026