

13.03.2026

Present: Ld. counsel for plaintiffs through VC with plaintiffs Sarita, Sushila and Kamlesh in person.
Ld. counsel for defendant through VC.

1. Plaintiffs are sisters of defendant.
2. Parties before this court are admittedly children of late Mahender Singh and late Malti Devi. They both have expired.

Brief Facts:

3. Plaintiffs claim that property bearing no. D-122, New Seelampur, Delhi measuring 80 square yards (hereinafter referred to as 'suit property') was allotted to their father Mahender Singh in 1977 by DDA.
4. He died intestate leaving behind his wife Malti Devi and six children (who are parties to this suit).
5. As per plaintiffs, Malti Devi also died intestate and thus, the suit property is liable to be partitioned with each of the parties to this suit entitled to 1/6th share each.
6. Thus, plaintiffs have *inter alia* sought partition with consequential possession of their respective shares. Additionally, they have also prayed for declaration to the effect that they are rightful owner of 1/6th share each in the suit property. They have also prayed for a decree of permanent injunction against defendant or any person

claiming through him from creating any third party interest in the suit property.

Defendant's Case:

7. Now, defendant does not dispute the relationship with the plaintiffs; or that Mahender Singh was the original allottee/owner of the suit property. It is his case that Mahender Singh/father of parties had executed sale documents in the nature of GPA, agreement to sell and Will etc dated 01.05.1981 in favour of his wife Malti Devi and since that time Malti Devi became the absolute owner of the suit property.
8. Eventually, as per defendant, Malti Devi executed a registered Will in his favour on 19.01.2016 (hereinafter referred to as '**Will in question**'). Thus, on the death of Malti Devi, as per defendant, he became the sole and absolute owner of the suit property because under the said Will, Malti Devi had left the entire property to the defendant.
9. It is pertinent to note herein that for the said Will in question, defendant had preferred an independent probate case bearing PC no. 1/24. The said petition was contested by the plaintiffs herein (who were arrayed as R-2 to R-6 in the said case). The said petition has been recently decided by this Court vide judgment dated 16.02.2026. The relevant portion of the said judgment reads as under:

“68. In my humble opinion, petitioner has to demonstrate on record that the said document was actually explained to Malti Devi or was explained the same as being her Will/testament. In other words, petitioner has failed to discharge the onus placed on his shoulders qua the due execution of the Will in question. The Will in question is surrounded by above noted suspicious circumstances and thus, in my humble opinion the said Will cannot be treated to have been duly proved on record. The suspicion surrounding the Will in question includes the fact that Malti Devi was not explained the contents of the Will in question; and the fact that Malti Devi did not have independent Counsel/opportunity to have the said document explained to her by any uninterested/neutral person. The role of attesting witnesses is also

under cloud and the suspicion surrounding the exclusion of all daughters despite the strained relationship with the son (with son taking the entire property) also remains unexplained. Thus, in my humble opinion, neither the Will in question is proved to be duly executed nor can it be said to be a genuine document. Accordingly, issue under consideration is decided against the petitioner and in favour of R-2 to R-6. Thus, petitioner is not entitled to grant of letter of administration qua Will of Malti Devi Ex. PW1/5 dated 19.01.2016. Thus, the present petition is dismissed.”

(emphasis supplied)

10. A bare perusal of the above would show that the petition of the defendant seeking probate/letter of administration qua the Will in question has been declined by this Court in probate case no. 1/24 on the ground that the said Will has not been proved, as per law. Thus, the entire defence of the defendant that he is the sole and absolute owner of the suit property on the basis of Will in question has lost its legal sanctity as the said Will has not been treated to have been proved by the Court of competent jurisdiction while exercising probate jurisdiction.
11. The said judgment is a judgment *in rem* and would thus, bind the world at large including the parties to the suit. Thus, once, vide the said judgment, the Will in question has been held to be not proved, defendant cannot be allowed to now raise the same defence to avoid partition and consequential reliefs flowing therefrom.
12. Parties were thus, given an opportunity to address arguments as to why the present suit may not be decided in light of Order XII Rule 6 r/w Order XV Rule 1 CPC in as much as both the parties before this court were parties in the said proceedings i.e. PC no. 1/24.
13. While counsel for plaintiffs argued that plaintiffs are entitled to judgment forthwith, counsel for defendant prayed that the outcome of appeal to be preferred by the defendant against the judgment passed in the probate case should be awaited for by this Court.

14. In my humble opinion, only because defendant may prefer an appeal against the judgment dated 16.02.2026 passed in PC no. 1/24 cannot be a ground to defer adjudication of this case. Thus, the request of counsel for defendant on that count is declined.
15. As already noted, the relationship between the parties is admitted. All the parties before this court are children and class-I legal heirs of late Mahender Singh and late Malti Devi. They do not dispute the fact that they are governed by Hindu Law of Succession.
16. Now, the only contention that requires mention is that while plaintiffs and defendant admit that the property was originally allotted to Mahender Singh, defendant claims that eventually Mahender Singh sold the same to his wife Malti Devi by way of GPA, agreement to sell, Will etc dated 01.05.1981. As per defendant, the said documents would make Malti Devi the absolute owner of the property.
17. In my humble opinion, the said argument is liable to fail on two counts. *Firstly*, presuming that such documents were executed by Mahender Singh, the said documents cannot be treated as documents of conveyance to give complete title of the suit property to Malti Devi (see **Suraj Lamp & Industries (P) Ltd. vs State Of Haryana & Anr. AIR 2012 Supreme Court 206**). *Secondly*, even if it is taken that the Will forming part of the said documents was actually executed by Mahender Singh in favour of Malti Devi and the said Will can make Malti Devi the owner of the property, still, once the Will of Malti Devi (covered in PC no. 1/24) has been held to be not proved, the partition of the suit property shall still flow as even if Malti Devi is treated as owner (on the basis of Will left by her husband dated

01.05.1981), still, the six legal heirs i.e. the parties before this court would be entitled to 1/6th share in the suit property.

18. So considered, in my humble opinion, the present case is a fit case for exercising powers u/O XII Rule 6 r/w Order XV Rule 1 CPC. There are no issues which are borne out from the pleadings of the parties which require any trial. Considering the above, in my humble opinion, the present suit can be decreed only on the basis of record and the facts noted above.

19. Thus, plaintiffs are held entitled to the following reliefs:

1. Plaintiffs are declared to have 1/6th share each in the suit property i.e. property bearing no.B-122, New Seelampur, Delhi measuring 80 square yards;
2. Each of the parties herein are entitled to 1/6th share therein;
3. Defendant or any person claiming through or under him is restrained from creating any third party interest in the suit property.

20. Plaintiffs have also prayed for a final decree of partition and consequential possession of their respective parts. The same shall require a further inquiry and thus, the issue of drawing up of a final decree and granting consequential possession of the portions of the parties in the suit property is deferred awaiting the outcome of the said inquiry.

21. Plaintiffs had also prayed for removal of *any unauthorised construction or encroachment made by defendant [see prayer (f)]*. This was premised on the ground that defendant started raising some

construction over the property and this fact was informed to them by an ex-tenant in the property on 22.06.2025. Since defendant himself had a share in the suit property, he did not require any specific permission from plaintiffs for making any construction in the property being a co-owner and thus, the said prayer is declined.

22. Let a preliminary decree sheet be prepared accordingly.

23. To come up for consideration on passing of final decree of partition on 28.04.2026 with the direction to the parties to file an affidavit indicating the manner in which the suit property (described in the judgment) can be divided by metes and bounds. They may also indicate whether they wish to purchase the *interse* shares of each other in the said property, in case the same cannot be physically divided by metes and bounds.

AASHISH GUPTA
DJ-01/NE/KKD/DELHI
13.03.2026