

CS 255/25
SUSHILA DEVI Vs. SHYAM SUNDER

28.04.2026

Present: Mr. Prabhat Kiran, Ld. Counsel for plaintiffs with P-1,
P-2 and P-5 in person.
Mr. S.K.S. Bhadauria, Ld. Counsel for defendant.

1. In this suit, *inter alia* a preliminary decree of partition was passed by this Court vide order dated 13.03.2026. The same reads as under:-

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.
2. Despite opportunities, parties have not filed any affidavit before this Court indicating the manner in which the aforesaid property can be partitioned.
3. Counsel for plaintiffs, on instructions submitted that his clients are willing to purchase the 1/6th share given to defendant under the preliminary decree. On the other hand, Counsel for defendant submitted that his client had placed reliance on a Will dated 19.01.2016 given to him by his mother Malti Devi. The letter of administration qua the said Will was declined to the defendant in PC No. 1/24 vide judgment dated 16.02.2026. The said judgment is stated to have now been challenged by defendant in RFA No. 391/2026 before the Hon'ble High Court of Delhi. Counsel for defendant submitted that till the decision of the said case, no final decree of partition can be passed in this case.

4. Admittedly, there is no stay to the present proceedings given by any Court of law. Only because the basis of defence of defendant i.e. the Will dated 19.01.2016 has been subject matter of litigation and letter of administration qua the same has been declined; which now is under challenge before the Hon'ble High Court of Delhi, this shall not mean that the present case should not reach its logical end. Fact of the matter remains that there is a preliminary decree passed by this Court on 13.03.2026 and now the only question to be considered is how the property in question can be divided by passing of a final decree. Thus, there is no question of staying the present proceedings so as to await outcome of RFA No. 391/2026 as prayed by the Counsel for defendant.
5. As per record, there are a large number of stake holders qua the suit property and the area of the property is only 80 sq yards. The construction of the property, as seen from the site plan attached to the plaint shows that the suit property consists of three floors.
6. 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 6 stake holders claiming. The vertical partition would lead to a very small area measuring about 13.33 sq yards being given to the parties which would leave no room for any of the parties to actually use the property.
7. 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.

8. **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.**
9. 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 13.03.2026, subject to costs, if any.
10. **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.
11. 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.
12. Accordingly, the Final Decree be drawn upon only on the submission of the requisite stamp papers.
13. It is clarified by way of abundant caution that the direction is for submission of stamp papers and **not Court Fees.**

14. I may note that while passing the preliminary decree, defendant or any person claiming through or under him was restrained from creating any third party interest in the suit property. The said relief is modified to the extent that defendant or any person claiming through or under him is restrained from 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.
15. With the said directions, nothing remains to be adjudicated in the present matter.
16. File be consigned to Record Room.

Aashish Gupta
DJ-01/NE/KKD/DELHI
28.04.2026