

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

**CS No. 260/22
CNR No. DLNE01-003447-2022**

In the matter of :-

Sitara
D/o Late Munna Khan
W/o Late Manjoor Ahmad
R/o C-41/15, Gali No. 9,
North Ghonda,
Delhi-110053

At presently:-
Khasra No. 714, Inam Vihar,
Loni, Ghaziabad, UP

..... Plaintiff

versus

1. Sahib
2. Samad (minor) through his
mother Shehnaz

Both are sons of Late Mohd. Saleem

3. Ayesha (minor) through her
mother Shehnaz
4. Shehnaz
W/o of Late Mohd. Saleem

All R/o H. No. C-41/15,
Gali No. 9, North Ghonda,
Delhi-110053

5. Salma
W/o Nawabuddin Saifi

R/o H. No. B-906, Gali No. 15,
Near Zakariya Masjid,
Subhash Mohalla,
Delhi-110053

6. Rehana
W/o Rahisuddin
R/o H. No. E-126, Vijay Vihar,
Phase-1, Near Badi Masjid,
Rohini, Delhi-110085
7. Rizwanwa
W/o Anis Ahmad
R/o H. No. A-52, Near Shiv Mandir,
Pahalad Garhi, Vasundhara,
Ghaziabad, U.P.
8. Bashiran
W/o Late Munna Khan
R/o H. No. C-41/15,
Gali No. 9, North Ghonda,
Delhi-110053.
9. Mumtaaz
W/o Firoz
D/o Mohd. Saleem
R/o E-166, Vijay Vihar,
Phase-I, Near Badi Masjid,
Delhi-110085.
10. Nargis
W/o Shamim
D/o Late Mohd. Saleem
R/o B-906, Gali No. 15,
Subhash Mohalla,
North Ghonda,
Delhi-110053.
11. Neha
W/o Shahrukh
D/o Late Mohd. Saleem

R/o Prehlad Gali,
Near Madina Masjid,
Vasundhara, Ghaziabad.

..... Defendants

Date of institution : 22.10.2022
Arguments heard on : 12.05.2026
Date of Judgment : 21.05.2026

JUDGMENT

1. Munna Khan (died on 04.11.2020) and Bashiran (D-8) had four daughters (who are plaintiff and D-5 to D-7 herein) and one son namely Mohd. Saleem (who died in 2015).
2. Mohd. Saleem had thus, predeceased his father Munna Khan. Mohd. Saleem left behind a widow namely Shehnaz (D-4), two sons namely Sahib and Samad (D-1 and D-2) and four daughters namely Ayesha (D-3), Mumtaz (D-9), Nargis (D-10) and Neha (D-11).
3. For easy reference, the family tree of Munna Khan is detailed as under:

TABLE-1			
S. No.	Name of family member	Relationship	Status in the present suit
1.	Bashiran	Widow of Late Munna Khan.	D-8
2.	Mohd. Saleem	Son of Late Munna Khan.	Since deceased. He predeceased Munna Khan.
3.	Shehnaz	Widow of deceased Mohd. Saleem.	D-4
4.	Sahib	Son of deceased Mohd. Saleem.	D-1
5.	Samad	Minor son of deceased Mohd. Saleem.	D-2
6.	Ayesha	Minor daughter of deceased Mohd. Saleem.	D-3

7.	Mumtaz	Married daughters of deceased Mohd. Saleem.	D-9 to D-11
8.	Nargis		
9.	Neha		
10.	Sitara	Married daughter of Late Munna Khan.	Plaintiff
11.	Salma	Married daughter of Late Munna Khan.	D-5
12.	Rehana	Married daughter of Late Munna Khan.	D-6
13.	Rizwanwa	Married daughter of Late Munna Khan.	D-7

4. The properties in dispute in this case are detailed in Table-2 below:

TABLE-2	
S. No.	Description of Property
1.	Property No. 1: H. No. C-41/15, Out of Khasra No. 139/2, Gali No. 9, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 100 square yards (i.e. build up property).
2.	Property No. 2: C-41/18, Out of Khasra No. 142/2, Gali No. 10, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 120 square yards.

5. As per record, parties are *Hanifi* Muslim by faith.

Plaintiff's Case:

6. Plaintiff/one of daughters of Munna Khan is before this court claiming that since her brother Mohd. Saleem had predeceased Munna Khan, his widow (Shehnaz/D-4) or his children (D-1 to D-3; D-9 to D-11) shall not succeed to any of the estate of Munna Khan. As per plaintiff, this is as per applicable Muslim Personal Law *interse* the parties.

7. It is her case that on the death of Munna Khan only five legal heirs were left by Munna Khan (i.e. plaintiff, D-5 to D-8) can succeed to the estate of Munna Khan; with his wife/D-8 succeeding to 1/6th share in the property; and the remaining coming to the hands of four daughters namely plaintiff and D-5 to D-7; with each one of them entitled to 1/4th share each.
8. It is pertinent to note that as per plaintiff, in property no. 2 various tenants are residing and the rent proceeds thereof is being received by D-1.
9. Thus, *inter alia* plaintiff has sought partition of both the above described properties with consequential possession. A preliminary decree of rendition of accounts qua the rent realized from property no. 2 is also sought. Plaintiff also want direction in the form of mandatory injunction to D-1 to D-4 directing them to vacate and remove their goods/household articles from property no. 1 (ground floor) and a decree of permanent injunction restraining defendants from selling or creating any third party interest in the suit properties is also prayed.
10. It is pertinent to note that plaintiff has also sought declaration of documents described in Table-3 below as null and void. This is premised on the ground that D-1 to D-4 and D-8 have claimed that the suit properties were gifted away by late Munna Khan in favour of his wife Bashiran/D-8 (vide the documents described at serial no. 1 and 2 in Table-3 below) on 10.07.2018; and thereafter, D-8 gifted the same properties to D-4 (daughter-in-law of D-8 and wife of Mohd. Saleem) by virtue of documents

described at serial no. 3 and 4 of Table-3 below on 17.01.2022. As per plaintiff, the said documents are forged and fabricated and have been prepared to grab the share of plaintiff and other defendants and are thus, liable to be declared as null and void.

TABLE-3			
S. No.	Nature of Documents	Executed by & in favour of	Eventually given as Exhibit No.
1.	Unregistered Gift Deed, possession letter and a GPA dated 10.07.2018 in respect of Property No. 1 i.e. H. No. C-41/15, Out of Khasra No. 139/2, Gali No. 9, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 100 square yards.	Late Munna Khan - Bashiran/D-8	Ex.DW1/1 (colly.) (OSR)
2.	Unregistered Gift Deed, possession letter and a GPA dated 10.07.2018 in respect of Property No. 2 i.e. C-41/18, Out of Khasra No. 142/2, Gali No. 10, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 120 square yards.	Late Munna Khan - Bashiran/D-8	Ex.DW1/2 (colly.) (OSR)
3.	Unregistered Gift Deed, possession letter and a GPA dated 17.01.2022 in respect of Property No. 1 i.e. H. No. C-41/15, Out of Khasra No. 139/2, Gali No. 9, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 100 square yards.	Bashiran - Shehnaz/D-4	Ex.DW1/3 (colly.) (OSR)
4.	Unregistered Gift Deed, possession letter and a GPA dated 17.01.2022 in respect of Property No. 2 i.e. C-41/18, Out of Khasra No. 142/2, Gali No. 10, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 120 square yards.	Bashiran - Shehnaz/D-4	Ex.DW1/4 (colly.) (OSR)

Case of D-1 to D-4 and D-8 to D-11:

11. As noted during narration of facts above, Munna Khan *inter alia* left behind his wife Bashiran/D-8. His son Mohd. Saleem predeceased him and widow of the said predeceased son and three of his children were arrayed as D-1 to D-4. Eventually, the remaining three children of Mohd. Saleem i.e. D-9 to D-11 also entered appearance and they adopted the defence/stand of D-1 to D-4 and D-8.
12. In sum and substance, it is their defence that Munna Khan had transferred both the suit properties in favour of his wife by virtue of documents described at serial no. 1 and 2 in Table-3 above on 10.07.2018. The said set of documents are stated to be sufficient to convey the title of both the suit properties from Munna Khan to Bashiran/D-8.
13. It is claimed that eventually both the properties were transferred by Bashiran/D-8 to D-4 by virtue of documents described at serial no. 3 and 4 in Table-3. It shall be relevant to specifically note the pleadings of the above defendants in verbatim and thus, the relevant portion of the pleadings of above defendants read as under:

“F. Late Shri Munna Khan out of sheer love and affection gifted the suit properties on 10.07.2018 to his only wife Smt. Basheeran, who is arrayed as defendant No. 8 in the instant suit and she had accepted the said properties as gift.

G. Smt. Basheeran, the defendant No. 8 out of sheer love and affection, gifted the said suit properties on 17.01.2022 to her daughter-in-law Smt. Shahnaz Begum, wife of Late Md. Saleem, (Defendant No. 4) in the instant suit and she had duly accepted the said suit properties as gift.”

Case of D-5 to D-7:

14. The said defendants, despite service, did not file any written statement. But, as per record, on 27.07.2023, they appeared in person and claimed that they have no objection if a preliminary decree of partition is passed in the present suit. They were eventually proceeded ex-parte due to repeated non-appearance.

Replication:

15. In the replication, plaintiff has rebutted the contention of D-1 to D-4 and D-8 to D-11 wherein they have relied upon documents described in Table-3 above. It is averred in the replication that late Munna Khan, during his lifetime, had filed one litigation against his tenant Ram Lal (who was in occupation of one of the properties in dispute in this case) and the said suit was decreed in favour of Munna Khan. Eventually, an execution petition bearing no. 83/18 titled as 'Munna Khan vs. Ram Lal' was filed and during the pendency of the said petition, Munna Khan expired on 04.11.2020.
16. It is averred that on the death of Munna Khan, eventually, an application u/O XXII Rule 3 r/w Sec. 151 CPC (for bringing on record the legal representatives of deceased Munna Khan) was filed before the concerned court of Ld. Administrative Civil Judge, North East, KKD Courts, Delhi which came to be allowed on 23.02.2021. It is the contention of plaintiff that in the said application, all the legal representatives of Munna Khan were brought on record and no contention was raised by D-8/Bashiran

that Munna Khan had gifted the suit properties to her on or about 10.07.2018 (by virtue of documents described at serial no. 1 and 2 of Table-3).

17. It is averred that if there was any gift of suit properties made by Munna Khan in favour of D-8/Bashiran, there was no need for all the legal representatives of Munna Khan to be brought on record. It is the contention of plaintiff that since D-8/Bashiran never produced any gift deed dated 10.07.2018 (described at serial no. 1 and 2 of Table-3 above) on 23.02.2021 (in the execution proceedings *interse* Munna Khan and Ram Lal), the contention in this case that the properties had already been gifted by Munna Khan to his wife Bashiran is an after-thought.
18. It is further contended that since there was no gift given by Munna Khan to Bashiran/D-8, she had no capacity to gift/give away the entire suit properties to D-4 by another set of gift deeds/documents described at serial no. 3 and 4 of Table-3 above.

Issues Framed:

19. Based on pleadings of the parties, following issues were framed vide order dated 08.01.2024, which read as under:-

Issue nos.

Issues

- (i) *Whether the plaintiff is entitled to decree of partition qua the properties bearing no. C-41/15, Gali no. 9, North Ghonda, Delhi-53 and property no. C-41/18, Gali no. 10, North Ghonda, Delhi-53, as prayed for ? OPP*
- (ii) *Whether the plaintiff is entitled to decree of possession, as prayed for ? OPP*
- (iii) *Whether the plaintiff is entitled to decree of declaration qua the documents dated 10.07.2018 and 17.01.2022, as prayed for in relief no.*

- (c)? OPP
- (iv) Whether the plaintiff is entitled to decree of rendition of accounts, as prayed for ? OPP
- (v) Whether the plaintiff is entitled to decree of mandatory injunction, as prayed for ? OPP
- (vi) Whether the plaintiff is entitled to decree of permanent injunction, as prayed for ? OPP
- (vii) Whether the father of the plaintiff namely Munna Khan gifted the suit properties to defendant no. 8 namely Smt. Basiran on 10.07.2018 ? OPD
- (viii) Whether the defendant no. 8 Smt. Basiran gifted the suit properties to defendant no.4 namely Shehnaz on 17.01.2022 ? OPD
- (ix) Whether the suit has not been properly valued for the purpose of court fees and jurisdiction ? OPD
- (x) Relief.

Evidence Led:

20. Plaintiff led her evidence which is detailed below:-

S. No.	Particulars of witnesses	Nature of witness and documents relied.
1.	Sitara/PW-1.	Plaintiff herself. She tendered her evidence by way of affidavit Ex. PW1/A wherein she reiterated her case. She relied upon the following documents:- 1. Photocopy of aadhar card of plaintiff [Ex.PW-1/1 (OSR). 2. Photocopy of ration card of plaintiff [Ex.PW-1/2 (OSR)]. 3. Site plans of suit properties [Ex.PW-1/3 (colly)]. 4. Certified copy of application u/O XXII Rule 3 r/w Sec. 151 CPC for bringing on record the LRs of deceased Munna Khan dated 28.01.2021, amended memo of parties and order dated 23.02.2021 in execution no. 83/2018 titled as 'Munna Khan vs. Ramlal' [Ex.PW1/4 (colly)]. 5. Photocopy of death certificate of deceased Munna Khan dated 03.11.2020 [Mark P1]. 6. Photocopy of gift deed and possession letter dated 10.07.2018 in favour of defendant no. 8 of suit properties [Mark P2 (colly)]. 7. Photocopy of gift deed and possession letter dated 17.01.2022 in favour of defendant no. 4 namely Shehnaz of suit properties [Mark P3 (colly)].

21. PW-1/plaintiff was duly cross-examined by Ld. Counsel for contesting defendants. No other witness was examined by the plaintiff and thus, PE was closed.

22. Thereafter, contesting defendants led evidence which is detailed below:

S. No.	Particulars of witnesses	Nature of witness
1.	Basheeran@ Bashrin/DW-1	She is D-8 in this case. She tendered her evidence by way of affidavit Ex. DW1/A whereby she reiterated the averments made in the written statement. She relied upon the following documents: 1. Copy of gift deed, possession letter and GPA executed by Munna Khan in favour of Bashiran in respect of Property No. 1 [Ex.DW1/1 (colly.) (OSR)]. 2. Copy of gift deed, possession letter and GPA executed by Munna Khan in favour of Bashiran in respect of Property No. 2 [Ex.DW1/2 (colly.) (OSR)]. 3. Copy of gift deed, possession letter and GPA executed by Bashiran in favour of Shahnaz Begum in respect of Property No. 1 [Ex.DW1/3 (colly.) (OSR)]. 4. Copy of gift deed, possession letter and GPA executed by Bashiran in favour of Shahnaz Begum in respect of Property No. 2 [Ex.DW1/4 (colly.) (OSR)].
2.	Shahnaz Begum/DW-2	She is D-4 in this case. She tendered her evidence by way of affidavit Ex. DW2/A whereby she reiterated the averments made in the written statement. She relied upon the following documents: 1. Three photographs [Ex.DW2/1 (colly.)]. 2. Copy of NOC/receipt in respect of property tax paid (2022-23) [Ex.DW2/2 (colly.)]. 3. Copies of registered power of attornies of suit properties dated 04.09.2023 [Ex.DW2/3 (colly.) (OSR) & Ex.DW2/4 (colly.) (OSR)].

23. Contesting defendants did not lead any further evidence and thus, DE was closed.

24. I have heard arguments advanced by Ld. Counsel for parties and have carefully perused the record.

Analysis & Findings:

25. Based on the evidence led before this court, the issue-wise finding in the matter is as under:

Issue no. (vii) & (viii)

- (vii) *Whether the father of the plaintiff namely Munna Khan gifted the suit properties to defendant no. 8 namely Smt. Basiran on 10.07.2018 ? OPD*
- (viii) *Whether the defendant no. 8 Smt. Basiran gifted the suit properties to defendant no.4 namely Shehnaz on 17.01.2022 ? OPD*

26. I propose to deal with the aforesaid issues together being inter-connected.
27. In a nutshell, the entire dispute is whether Munna Khan had gifted the suit properties i.e. property no. 1 and property no. 2 to his wife Bashiran/D-8 or not. If the properties had actually been gifted, in law, on the date of said gift, D-8/Bashiran become owner of both the properties and therefore, after the said gift, plaintiff or any other legal heir of Munna Khan (save and except Bashiran/D-8) shall have no right, title or interest under which they can claim any share in the suit property. The suit properties shall then have to be treated as the properties of D-8/Bashiran from the date of said gift and thus, each of the reliefs sought by plaintiff in the suit shall fail.
28. But, if there was no gift of both or either of the properties, then, in law, on the death of Munna Khan, the properties shall devolve upon surviving legal heirs, as per *Shariat*. This shall include his wife Bashiran/D-8 (who will succeed as a *sharer* to the estate of Munna Khan); his four daughters (i.e. plaintiff along with D-5 to D-7 who also will succeed as a *sharer* to the estate of Munna Khan with they all together taking 2/3rd of the estate); and children of Mohd. Saleem (i.e. his two sons D-1 and D-2; and four

daughters i.e. D-3, D-9 to D-11 who will succeed as a residuary in their capacity of being son's sons and son's daughters). The reasons of such a succession, if the gift is not proved, shall be dealt at an appropriate stage.

29. I may note that since, son of Munna Khan i.e. Mohd. Saleem had predeceased him, his wife or children (few of whom are D-1 to D-4 before this court) shall not succeed to the estate of Munna Khan through Mohd. Saleem. The children of Mohd. Saleem may succeed to some share in the estate in their own capacity, if *Shariat* so permits. But, this capacity shall be different and distinct from the fact that the said children cannot take any estate of Munna Khan which may have fell in the hands of Mohd. Saleem, had he been alive at the date of death of Munna Khan. This is because, as per Muslim Law, succession happens *per capita* and not *per stripes* and thus, when Mohd. Saleem predeceased his father Munna Khan, any right under Muslim Law shall not flow from Munna Khan to Mohd. Saleem when Munna Khan died. Thus, the children of Mohd. Saleem or his wife cannot take in his lieu any estate of Munna Khan. Though, the children of Mohd. Saleem, in their own capacity, may succeed.
30. In such scenario, plaintiff, other three daughters i.e. D-5 to D-7 along with D-8/Bashiran (wife of Munna Khan) shall succeed to estate of Munna Khan as per applicable rules of succession. Possibly, some estate may still go to the children of Mohd. Saleem in their own right and if such an occasion arises, the same shall be discussed in the body of the judgment at the appropriate stage.

31. I may note that it is not in dispute before this court that each of the suit properties were the properties of Munna Khan. It is also not in dispute before this court that the parties are *Sunni* Muslims and are governed *Hanifi* School.
32. The contesting defendants i.e. D-1 to D-4 and D-8 have contested the suit only on the basis of documents described in Table-3 above which is reproduced hereinafter for easy reference:

TABLE-3			
S. No.	Nature of Documents	Executed by & in favour of	Eventually given as Exhibit No.
1.	Unregistered Gift Deed, possession letter and a GPA dated 10.07.2018 in respect of Property No. 1 i.e. H. No. C-41/15, Out of Khasra No. 139/2, Gali No. 9, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 100 square yards.	Late Munna Khan - Bashiran/D-8	Ex.DW1/1 (colly.) (OSR)
2.	Unregistered Gift Deed, possession letter and a GPA dated 10.07.2018 in respect of Property No. 2 i.e. C-41/18, Out of Khasra No. 142/2, Gali No. 10, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 120 square yards.	Late Munna Khan - Bashiran/D-8	Ex.DW1/2 (colly.) (OSR)
3.	Unregistered Gift Deed, possession letter and a GPA dated 17.01.2022 in respect of Property No. 1 i.e. H. No. C-41/15, Out of Khasra No. 139/2, Gali No. 9, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 100 square yards.	Bashiran - Shehnaz/D-4	Ex.DW1/3 (colly.) (OSR)
4.	Unregistered Gift Deed, possession letter and a GPA dated 17.01.2022 in respect of Property No. 2 i.e. C-41/18, Out of Khasra No. 142/2, Gali No. 10, North	Bashiran - Shehnaz/D-4	Ex.DW1/4 (colly.) (OSR)

	Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 120 square yards.		
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33. Counsel for contesting defendants argued that in order to prove gift of the suit properties by Munna Khan to Bashiran/D-8; and thereafter, by Bashiran/D-8 to D-4, both Bashiran/D-8 and Shehnaz/D-4 have stepped in the witness box as DW-1 and DW-2 respectively. It was argued that on the strength of documents described in Table-3 above, initially, Bashiran become the owner of both the suit properties on 10.07.2018 and eventually D-4/Shahnaz become owner of each of the suit properties on 17.01.2022. It was argued that the testimony of both the said witnesses is sufficient to discharge the onus qua both the issues under consideration and thus, plaintiff or D-5 to D-8 have no right, title or interest in the said suit properties. It was submitted that as on date D-4 is the absolute owner of the suit properties.
34. On the other hand, counsel for plaintiff argued that neither the factum of gift has been proved on record nor the documents sought to be relied by the contesting defendants (shown in Table-3 above) have been proved as per law. It was argued that each of the said documents are forged and fabricated documents in as much as only after plaintiff demanded her share in the suit property, the contesting defendants produced the said documents to resist partition.
35. Counsel for plaintiff argued that if Bashiran had become the owner of both the suit properties by virtue of Ex.DW1/1 (colly.)

and Ex.DW1/2 (colly.), why did she not produce it before the court of Ld. Administrative Civil Judge in execution proceedings bearing no. 83/18. The said execution petition was filed by late Munna Khan against one of his tenants Ram Lal wherein Munna Khan was seeking possession of some area forming part of property no. 2. Counsel pointed out that on 23.02.2021, legal representatives of Munna Khan were taken on record by the said court which included plaintiff, her three sisters i.e. D-5 to D-7 and D-8 Bashiran and all the LR's of Mohd. Saleem. It is submitted on behalf of plaintiff that if Bashiran was owner of both the properties as on 23.02.2021, Bashiran would have objected to the said application by claiming that she is the sole owner of the property involved therein and it was she who would then have been impleaded in the said court.

36. Counsel for plaintiff specifically relied upon Ex.PW1/4 (colly.) which is copy of said application, amended memo and order dated 23.02.2021 in this regard. It is argued that the fact Bashiran did not produce or claim sole ownership before the said court would show that the story of a prior gift dated 10.07.2018 (on the basis of Ex.DW1/1 and Ex.DW1/2) is a false and fabricated story.
37. I have given thoughtful consideration to the rival arguments of the parties and have gone through the entire record and the evidence before me.
38. At the outset, I may note that under Muslim Law, an oral gift of immovable property is recognized. It is no longer *res integra* that such oral gift can validly transfer the immovable property from

one person to another.

39. Under Muslim Law, a gift of an immovable property has three basic requirements. These are as follows:

(i) manifestation of the wish to give on the part of the donor;

(ii) acceptance of the donee, either impliedly or expressly; and

(iii) the taking of possession of the subject matter of the gift by the donee, either actually or constructively.

(see Mohd. Abdul Ghani vs. Fakhr Jahan Begum 1922 SCC Online PC 18 on which reliance has been placed by the Hon'ble Supreme Court of India in judgment dated 19.12.2024 passed in CA no. 4211 of 2009 titled as Mansoor Saheb (dead) & others vs. Saleema (D) by LRs & others at para 24 to 28).

40. Thus, before any oral gift under Muslim Law can be recognized, it is mandatory in law that the above three essential requirements are fulfilled. If the said conditions are not fulfilled, there is no gift under Muslim Law and thus, in such case, the title of the property shall not pass from the donor to donee.
41. Now, I may note that in the present case, Bashiran/D-8 is the first beneficiary of the gift of the suit properties. The same is stated to have been made on 10.07.2018. At this stage, even at the cost of repetition, it shall be relevant to specifically note the pleadings of the contesting defendants i.e. D-1 to D-4 and D-8 to D-11 (with the written statement filed by D-1 to D-4 and D-8 only; and D-9 to D-11 adopting it later) in verbatim and thus, the relevant portion of the pleadings of above defendants read as under:

"F. Late Shri Munna Khan out of sheer love and affection gifted the suit properties on 10.07.2018 to his only wife Smt. Basheeran, who is arrayed as defendant No. 8 in the instant suit and she had accepted the said properties as gift.

G. Smt. Basheeran, the defendant No. 8 out of sheer love and

affection, gifted the said suit properties on 17.01.2022 to her daughter-in-law Smt. Shahnaz Begum, wife of Late Md. Saleem, (Defendant No. 4) in the instant suit and she had duly accepted the said suit properties as gift.”

(emphasis supplied)

42. As per the said pleadings, Bashiran/D-8 claims that her husband, out of sheer love and affection, gifted the suit properties on 10.07.2018 to her; and she accepted it. **But, she does not say in her pleadings that the possession of the suit properties was actually or constructively taken by her.**
43. Even in the affidavit in evidence of Bashiran (Ex.DW1/A), she does not speak of any possession being taken over by her either physically or constructively. In this regard, reference can be had to para 8 of Ex.DW1/A wherein Bashiran claims “*that Late Shri Munna Khan out of sheer love and affection gifted the suit properties on 10.07.2018 to the deponent who is arrayed as defendant no. 8 in the instant suit and she had accepted the said properties as the gifts”*.”
44. **Thus, Bashiran/D-8 neither in her pleadings nor in her oral testimony speaks of any possession, actual or constructive, being given to her by her husband Munna Khan. The giving of possession is one of the essential requirements for completion of gift of an immovable property.** Once Bashiran/D-8 does not speak of any possession being accepted by her, the purported gift made to her by her husband on 10.07.2018 cannot be said to have been completed so as to transfer the ownership of the suit properties from Munna Khan to her.
45. It is pertinent to note that the documents described at serial no. 1

and 2 of Table-3 above i.e. Ex.DW1/1 (colly.) and Ex.DW1/2 (colly.) are relied as documents which gave title of the suit properties to Bashiran/D-8.

46. Ex.DW1/1 (colly.) pertains to property no. 1 and comprises of (a) written version of *hibanama zubani* (gift deed) dated 10.07.2018; (b) a possession letter dated 10.07.2018; (c) a GPA dated 10.07.2018.
47. Ex.DW1/2 (colly.) pertains to property no. 2 and comprises of (a) written version of *hibanama zubani* (gift deed) dated 10.07.2018; (b) a possession letter dated 10.07.2018; (c) a GPA dated 10.07.2018.
48. As per the said two gift deeds, the gift of the suit properties was made orally by Munna Khan to Bashiran/D-8 and only to keep a record of the said oral gift, the said written versions were prepared.
49. This means that the above two gift deeds are purportedly the written version of the oral gift.
50. But, if one reads the testimony of Bashiran/D-8, she does not speak of any oral gift being made to her by her husband Munna Khan on 10.07.2018. She simply claims that the properties were gifted and then goes on to rely upon the copies of the gift deeds and possession letters etc as Ex.DW1/1 (colly.) and Ex.DW1/2 (colly.).
51. If any oral gift had actually taken place, as per Muslim Law, it was necessary for Bashiran/D-8 to specifically plead in her written statement this fact. It shall not be sufficient to simply rely

upon a document/gift deed which itself claims to be a written version of the oral gift. Before Bashiran/D-8 could rely upon the said gift deeds forming part of Ex.DW1/1 (colly.) and Ex.DW1/2 (colly.), it was necessary for her to specifically plead and then prove in her evidence that prior to the said documents being executed, an oral gift was actually made by Munna Khan in her favour; which she accepted and the possession of the properties was also transferred to her.

52. Since the pleadings and the evidence of Bashiran/D-8 does not say the fact that any oral gift was made by Munna Khan to her or the fact that she took possession of the suit properties from Munna Khan in pursuance to said oral gift, in my humble opinion, the evidence of Bashiran cannot be read to mean that there was transfer of title from Munna Khan to Bashiran/D-8. One of the basic requirements of an oral gift under Muslim Law i.e. receipt of possession is missing in this case.
53. The gift deeds forming part of Ex.DW1/1 (colly.) and Ex.DW1/2 (colly.) are themselves claiming to be written versions of the oral gift. Before the same can be read, it is necessary that defendants, especially D-8 pleads oral gift. She never set up a case of oral gift in her favour by her husband Munna Khan and simply relied upon the above documents to claim ownership. The said documents could be read only if an oral gift was pleaded and proved on record. The same is not the case herein.
54. Thus, in my humble opinion, the entire case of the contesting defendants is liable to fail. The contesting defendants have

opposed partition on the ground that Munna Khan gifted the properties to Bashiran/D-8; who in turn gifted the properties to D-4. With D-8 having not acquired any title qua the suit properties, there is no question of she having the necessary capacity to gift it to D-8.

55. Thus, in my humble opinion, both the issues under consideration are liable to be decided against the defendants.
56. There is another reason for taking the above view. In the replication, plaintiff has rebutted the contention of D-1 to D-4 and D-8 wherein they have relied upon documents described in Table-3 above. It is averred in the replication that late Munna Khan, during his lifetime, had filed one litigation against his tenant Ram Lal (who was in occupation of one of the properties in dispute in this case) and the said suit was decreed in favour of Munna Khan. Eventually, an execution petition bearing no. 83/18 titled as 'Munna Khan vs. Ram Lal' was filed and during the pendency of the said petition, Munna Khan expired on 04.11.2020.
57. It is averred that on the death of Munna Khan, eventually, an application u/O XXII Rule 3 r/w Sec. 151 CPC (for bringing on record the legal representatives of deceased Munna Khan) was filed before the concerned court of Ld. Administrative Civil Judge, North East, KKD Courts, Delhi which came to be allowed on 23.02.2021. It is the contention of plaintiff that in the said application, all the legal representatives of Munna Khan were brought on record and no contention was raised by D-8/Bashiran

that Munna Khan had gifted the suit properties to her on or about 10.07.2018 (by virtue of documents described at serial no. 1 and 2 of Table-3).

58. It is averred that if there was any gift of suit properties made by Munna Khan in favour of D-8/Bashiran, there was no need for all the legal representatives of Munna Khan to be brought on record. It is the contention of plaintiff that since D-8/Bashiran never produced any gift deed dated 10.07.2018 (described at serial no. 1 and 2 of Table-3 above) on 23.02.2021 (in the execution proceedings *interse* Munna Khan and Ram Lal), the contention in this case that the properties had already been gifted by Munna Khan to his wife Bashiran is an after-thought.
59. As per document Ex.PW1/4, an application u/O XXII Rule 3 CPC was moved in execution petition no. 83/18. This execution petition was filed by Munna Khan against one Ram Lal and the said application was moved after the death of Ram Lal on 30.01.2021. The said application was eventually allowed on 23.02.2021 by the concerned executing court by taking all the parties before this court on record as legal representatives of Munna Khan.
60. If Munna Khan had already, by way of oral gift, gifted both the suit properties to Bashiran/D-8 on 10.07.2018, where was the need for other legal heirs (except Bashiran) to be brought on record in the said execution petition. The said execution petition, as per parties, was pertaining to a portion of one of the properties herein. This casts a long shadow of doubt upon the claim of

contesting defendants that the suit properties were actually gifted by Munna Khan on 10.07.2018.

61. Be that as it may, since the oral gift has not been pleaded and proved on record, Bashiran never got any right, title or interest in the suit properties from Munna Khan so as to claim ownership thereof; or to give her the capacity to eventually gift them to D-4.
62. Accordingly, both the issues under consideration are decided against D-1 to D-4 and D-8 to D-11.

Issue No. (i),(ii), (iv) to (vi)

- (i) *Whether the plaintiff is entitled to decree of partition qua the properties bearing no. C-41/15, Gali no. 9, North Ghonda, Delhi-53 and property no. C-41/18, Gali no. 10, North Ghonda, Delhi-53, as prayed for ? OPP*
- (ii) *Whether the plaintiff is entitled to decree of possession, as prayed for ? OPP*
- (iv) *Whether the plaintiff is entitled to decree of rendition of accounts, as prayed for ? OPP*
- (v) *Whether the plaintiff is entitled to decree of mandatory injunction, as prayed for ? OPP*
- (vi) *Whether the plaintiff is entitled to decree of permanent injunction, as prayed for ? OPP*

63. All the above issues are interconnected and are thus, taken up together.
64. Since the contesting defendants have failed to prove a valid gift from Munna Khan to Bashiran/D-8, therefore, it has to be taken that the property in question shall devolve, under Muslim Law by way of intestate succession.
65. There is no dispute before this court that the parties are Muslim by religion; are governed by *Hanifi* school; and with respect to

interse relationship amongst them. It is also not disputed that Mohd. Saleem had predeceased Munna Khan. The date of death of Munna Khan is also not disputed. He died on 04.11.2020.

66. Thus, on the death of Munna Khan, succession opened qua the estate left behind by him.
67. Munna Khan left behind various legal heirs and as per counsel for plaintiff, his wife Bashiran/D-8 (who will succeed as a *sharer* to the estate of Munna Khan to the extent of 1/8th share); and his four daughters (i.e. plaintiff along with D-5 to D-7 who also will succeed as a *sharer* to the estate of Munna Khan with they all together taking 2/3rd of the estate) shall be entitled to succeed.
68. As per counsel for plaintiff, the predeceased son of Munna Khan i.e. Mohd. Saleem cannot take any share in the estate of Munna Khan and thus, even his wife and children shall be excluded.
69. **In my humble opinion, the estate of Munna Khan shall devolve upon his wife/Bashiran (D-8); his four daughters (plaintiff, D-5 to D-7). They all shall succeed to the estate of Munna Khan in the capacity of *sharer*.**
70. As far as his son Mohd. Saleem is concerned, admittedly, he predeceased Munna Khan and therefore, under Muslim Law, D-1 to D-4 or D-9 to D-11 cannot take any estate of Munna Khan in lieu of their father/husband Mohd. Saleem. But, this does not mean that as far as the children of Mohd. Saleem are concerned, they cannot succeed to any share in the estate of Munna Khan directly from him. The Ld. counsel for the plaintiff is incorrect to argue that in all circumstances, children of a predeceased

son/daughter are precluded from inheriting any share in the estate of a deceased Muslim.

71. As a general rule, there is no concept of *per stripe* inheritance in Muslim Law and the inheritance is followed *per capita*. This only means that in case of a predeceased son/daughter, the children of the said predeceased son/daughter cannot step into the shoes of their predecessor to claim inheritance in lieu of their predecessor. But, if law permits, they can directly still succeed from their ancestor/propositus.
72. In this regard, I may fruitfully place reliance on the judgment of **Smt. Ashabi vs. Smt. Faziyabi and Others AIR 2004 KANT 476**, where a similar view has been taken. The relevant paragraphs of the said judgment read as under: -

"10. It is fairly well settled that the heirs of a Muslim can claim their shares only in what remains, if at all, after all the statutory liabilities have been met out of the property and the debts and valid legacies and death-bed gifts (if any) paid, out of the property of the propositus. A person who according to Muslim law is an heir of the deceased remains so and gets his legal due. He or she cannot be excluded either by other heirs and survivors of the deceased or even under a specific direction left in that behalf by the deceased himself. One can be excluded from inheritance only under a rule of Muslim law, if applicable in India. It is also well settled that only that relative can be an heir of the deceased who is alive at the moment of the latter's death. A person who died before the deceased cannot be his heir. The survivors of such a person can in some cases inherit direct from the propositus, but not in place of or in the right of the said person who died before the propositus (Ref: Muslim law of India by Tahir Mahmood). (Underline is mine).

11. Therefore, what is clear, to me is that a predeceased son or a daughter gets excluded in view of the prior death in the given circumstances. This proposition is also considered by various Courts."

(emphasis supplied)

73. Even otherwise, if one peruses various commentaries on Muslim Law including the celebrated work **D.F. Mulla titled Principles of**

Mohammedan Law, it would be apparent that even though there is no concept of representation in Muslim Law and thus, no heir can claim share in the estate of the deceased as a representative/in lieu of his father/mother. Only heirs who are alive on the date of death of the deceased can claim in their own capacity to a share. Thus, if the children of Mohd. Saleem can show that they, in their own capacity, are entitled to a share to the estate of Munna Khan, in such scenario, they may claim a share. But, they cannot claim share as representatives of Mohd. Saleem.

74. Now, as far as wife of Munna Khan is concerned i.e. D-8/Bashiran, there cannot be any two arguments that, in law, she shall succeed to a share in the estate of Munna Khan. Plaintiff does not dispute this fact.
75. Under Muslim Law, wife is considered as a *sharer – a person who takes a fixed share in the estate as per the Holy Quran* - and she is entitled to 1/8th share in the estate of her husband. Even though, plaintiff has claimed that wife of Munna Khan i.e. D-8 should get 1/6th share, it was neither argued nor clarified how the said share has been calculated.
76. Under the various Muslim Law texts, a wife is entitled to 1/8th share in the estate of her husband where he leaves children [see **Zoharbee & anr. vs. Imam Khan (D) through LRs & ors. 2025 INSC 1245 passed by the Hon'ble Supreme Court of India**]. The above share is to be given after payment of funeral expenses, debts and legacies. In this case, there is no evidence to suggest that any funeral expenses, debts or legacies are pending.

77. In this regard, reference can also be taken to Chapter 4 of Holy *Quran*. The relevant verses dealing with question of inheritance under Muslim Law are as under:

*“4:11 Allah commands you regarding your children: the share of the male will be twice that of the female. **1 If you leave only two 'or more' females, their share is two-thirds of the estate.** But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. **2 But if you are childless and your parents are the only heirs, then your mother will receive one-third. 3 But if you leave siblings, then your mother will receive one-sixth**—after the fulfilment of bequests and debts. **5 'Be fair to' your parents and children, as you do not 'fully' know who is more beneficial to you. 6 'This is' an obligation from Allah. Surely Allah is All-Knowing, All- Wise.***

*4:12 You will inherit half of what your wives leave if they are childless. But if they have children, then 'your share is' one-fourth of the estate—after the fulfilment of bequests and debts. **And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts.** And if a man or a woman leaves neither parents nor children but only a brother or a sister 'from their mother's side', they will each inherit one-sixth, but if they are more than one, they 'all' will share one-third of the estate—after the fulfilment of bequests and debts without harm 'to the heirs'. **2 'This is' a commandment from Allah. And Allah is All-Knowing, Most Forbearing.**”*

(emphasis supplied)

78. A bare perusal of the above would show that when a Muslim leaves a wife and children, such wife takes 1/8th share in the estate of her husband. **Thus, under Muslim Law, Bashiran/D-8 would, in the capacity of sharer, be entitled to 1/8th share in the suit properties.**
79. Now, as far as the daughters of Munna Khan are concerned i.e. plaintiff, D-5 to D-7, since there is no son alive when succession opens, all the daughters herein (total four in number) would take 2/3rd fixed share in the estate of their father in the capacity of *sharer*. In this regard, reference can be had to the above quoted text of the Holy *Quran* Chapter 4 *Al Nisa* which provides that

when a Muslim man leaves multiple children and they are two 'or more' females, their share is two-thirds of the estate.

80. Thus, all the four daughters of Munna Khan shall be entitled to fixed 2/3rd share in his estate. This share shall be taken by the daughters in the capacity of being a *sharer*.
81. Now, after adding the fixed share of the wife Bashiran/D-8 (i.e. 1/8th share) and that of the daughters [i.e. the plaintiff, D-5 to D-8] (i.e. 2/3rd share), the total of the same shall be less than 1 and a residue of 5/24 shall be left.
82. It means that after adding the entire fixed sharers of the legal heirs left by Munna Khan, some estate of deceased Munna Khan shall be left behind and now this residue estate, in law, has to be given to *residuary heirs* of Munna Khan.
83. Before proceeding further, it would be relevant to note that under Muslim Law of inheritance, there can be essentially two types of possible heirs and successors. The first type shall be persons related by marriage and blood. The second type will be unrelated successors.
84. In the first type of successors, there are (a) sharers (who get a fixed share in the estate as mandated in holy *Quran* and they are 12 in number); (b) residuaries (who are all male agnates and four females who are sharers but who get converted into residuaries in few cases); (c) distant kindered (which cover all other blood relations).
85. The 12 *Sharers* provided under Muslim Law are as follows:

(1) Husband, (2) Wife, (3) Daughter, (4) Daughter of a son (or son's son or son's son's son and so on), (5) Father, (6) Paternal Grandfather, (7) Mother, (8) Grandmother on the male line, (9) Full sister (10) Consanguine sister (11) Uterine sister, and (12) Uterine brother.

TABLE OF SHARERS IN SUNNI LAW					
Sl. No.	Sharers	Normal Share of One	Normal Share of two or more collectively	Conditions under which the normal share is inherited	This Column sets out: (A) Shares of Sharers as varied by special circumstances (B) Conditions under which sharers succeed as Residuaries.
4.	WIFE	1/8	1/8	When there is an agnatic descendant	¼ When no agnatic descendant
7.	DAUGHTER	1/2	2/3	When no Son	With the son she becomes a residuary
8.	SONS DAUGHTER h.l.s	1/2	2/3	When no (1)Son, (2)Daughter (3)Higher Son's Son, (4)Higher Son's daughter, or (5)Equal Son's son	When there is only one daughter, or higher son's daughter but no (1)Son, (2)Higher Son's Son, or (3)Equal Son's Son, the daughter or higher son's daughter will take ½ and the sons's daughter h.l.s., (whether one or more) will take 1/6, 2/3, 1/2 (with and equal son's son they becomes a residuary).
	(i)Son's Daughter	1/2	2/3	When no (1)Son, (2)Daughter or (3)Son's son's	When there is only one daughter, the son's daughter (whether one or more) will take 1/6, if there be no son or son's son. With the son's son she becomes a residuary.
	(ii)Son's Son's Daughter	1/2	2/3	When no (1)Son, (2)Daughter (3) Son's Son, (4) Son's daughter, or (5) Son's son's son.	When there is only one daughter or son's daughter, the son's son's daughter (whether one or more) will take 1/6, if there be no (1)Son (2)Son's son (3)Son's son's son. With the Son's son's, she becomes a residuary.

86. Since in this case Munna Khan left wife and four daughters, they only shall be treated to be entitled to succeed as *sharers* with daughters being related by blood through Munna Khan and Bashiran/D-8 being his spouse.

87. I may note that the four daughters have succeeded as *sharers and not as residuaries because when succession opened in this case, no son of Munna Khan was alive*. Thus, all the four daughters would together take 2/3rd share in the estate as *sharer*.
88. Now, it is pertinent to note that Munna Khan left behind two son's sons (i.e. D-1 and D-2 who are two sons of Mohd. Saleem) and three son's daughters (i.e. D-3, D-9 to D-11 who are three daughters of Mohd. Saleem).
89. As per the Table of *sharers* quoted above, son's daughters are considered as *sharers* in certain circumstances. That includes when there is no son or daughter of the deceased. Since in this case, four daughters of deceased Munna Khan are available, they cannot be treated as *sharers* and shall become a *residuary*.
90. Again, since there are son's sons (2 in number) are present along with similarly placed son's daughters (4 in number), all of them together would become *residuary* heirs of Munna Khan and would together take up the residue of 5/24 from the estate of Munna Khan. This is because, they are the blood relatives of late Munna Khan connected to him through Mohd. Saleem.
91. Now, since, under Muslim Law, a son takes twice the share of a daughter, the residuary estate of 5/24 would be divided in the ratio of 2:1 amongst the residuary heirs of Munna Khan. Thus, D-1 and D-2 shall take twice the estate i.e. available to D-3, D-9 to D-11.
92. The argument of counsel for plaintiff that nothing shall go to children of Mohd. Saleem is incorrect as they can still succeed to the estate of Munna Khan directly from him in their own capacity

and not as a representative of Mohd. Saleem.

93. Thus, the calculation of the shares of the estate of Munna Khan shall be as follows:

Calculation of shares in the estate of late Munna Khan by applying the principle of Radd/Return.
Step 1: Share of his wife Bashiran/D-8: 1/8th (fixed share) Share of four daughters [plaintiff, D-5 to D-7]: 2/3rd (fixed share)
Step 2: Sum of fixed shares $1/8 + 2/3 = 3/24 + 16/24 = 19/24$
Step 3: Residue left $1 - 19/24 = 5/24$
Step 4: The above residue shall go to the residuaries i.e. D-1, D-2, D-3, D-9 to D-11. The share of D-1 and D-2 (being son's sons) shall be twice that is available to D-3, D-9 to D-11 (being son's daughters). The share would thus, become: D-1: $2/8 \times 5/24 = 5/96$ D-2: $2/8 \times 5/24 = 5/96$ D-3: $1/8 \times 5/24 = 5/192$ D-9: $1/8 \times 5/24 = 5/192$ D-10: $1/8 \times 5/24 = 5/192$ D-11: $1/8 \times 5/24 = 5/192$
Step 5: The final shares of each of the legal heirs of Munna Khan would thus, come to: 1. Bashiran/D-8 (wife of Munna Khan) = 1/8 as a <i>sharer</i>, 2. The four daughters (plaintiff, D-5 to D-7) would together take 2/3 and they would individually take 1/4 of the said share and thus, each one of them would get 1/6 share each as a <i>sharer</i>. 3. D-1 shall take 5/96 (in the capacity of son's son as a residuary). 4. D-2 shall take 5/96 (in the capacity of son's son as a residuary). 5. D-3 shall take 5/192 (in the capacity of son's daughter as a residuary). 6. D-9 shall take 5/192 (in the capacity of son's daughter as a residuary). 7. D-10 shall take 5/192 (in the capacity of son's daughter as a residuary). 8. D-11 shall take 5/192 (in the capacity of son's daughter as a residuary).

94. Considering the above, plaintiff is entitled to a preliminary decree of partition with she being entitled to 1/6th share in the estate of Munna Khan i.e. the suit properties. Each of the remaining

daughters i.e. D-5/Salma, D-6/Rehana and D-7/Rizwanwa (being daughters of Munna Khan) shall also be entitled to 1/6th share in the suit properties.

95. Bashiran/D-8 shall take 1/8th share in the said properties.
96. D-1 and D-2 shall take 5/96th share each in the said properties.
97. D-3, D-9 to D-11 shall take 5/192th share each in the said properties.
98. **The issue no. (i) is decided accordingly.**
99. **Issue no. (ii)** relates to granting possession of the suit properties to the extent of plaintiff's share. This can be given only after the properties are divided by metes and bound as per the allocated share. The same shall require further inquiry and can be given only at the time of drawing of final decree. Thus, this issue is deferred pending inquiry qua the manner in which the suit properties are to be divided by metes and bound.
100. **Issue no. (iv)** relates to rendition of accounts. As per the evidence brought on record, property no. 2 has multiple tenants numbering about 32. This fact has also come in the cross-examination of DW-1 wherein she admits that her grandsons D-1 and D-2 are collecting rent from the property given on rent and the same is received by her. As per her cross-examination, she receives about Rs.50,000/- per month as rent from the said property.
101. Since Munna Khan left behind various legal heirs, each one of them shall be entitled to a share in the said rent from the date when succession opened. This shall be the date of death of Munna

Khan which is admittedly 04.11.2020. But, in the present case, plaintiff has not specified any date from which she is praying for rendition of accounts. Thus, with effect from the date of filing of present suit, the legal heirs (who have been given preliminary decree of partition) would be entitled to the share in rent in the same proportion as the preliminary decree.

102. Accordingly, this issue no. (iv) is also decided in favour of the plaintiff with she being entitled to rendition of accounts qua property no. 2 w.e.f. date of filing of the suit i.e. 22.10.2022 till the said accounts are settled. All the legal heirs, as per preliminary decree, shall be entitled to share as per the preliminary decree.

103. Now coming to issue no. (v), plaintiff has sought a decree of mandatory injunction against D-1 to D-4 where-under she wants that the said defendants be directed to remove their goods, household articles etc from the ground floor of property no. 1. It is the contention of the plaintiff that since the said defendants have not succeeded to any share in the estate of Munna Khan, therefore, they should be directed in the aforesaid manner. In my humble opinion, since D-1 to D-3 have succeeded to a share in property no. 1, no direction can be given to them to remove their goods. Again, D-2 and D-3 are stated to be minors and their mother/D-4 represents their interest. Thus, she cannot be directed to remove the goods in the manner prayed.

104. Accordingly, the issue no. (v) under consideration is decided against the plaintiff.

105. Now coming to issue no. (vi), plaintiff wants a decree of

permanent injunction restraining the defendants or any person claiming through or under them from creating any third party interest in the suit properties. Considering the fact that plaintiff has a share in the suit properties, plaintiff is awarded a decree of permanent injunction restraining the defendants or any person through or under them from creating any third party interest in the suit properties to the extent of plaintiff's share therein till the suit properties are divided by metes and bounds.

106. The issue no. (vi) is decided accordingly.

Issue No. (iii)

(iii) Whether the plaintiff is entitled to decree of declaration qua the documents dated 10.07.2018 and 17.01.2022, as prayed for in relief no. (c)? OPP

107. The documents referred in the above issue are tabulated in Table-3 noted above. As per the case of plaintiff, the said documents are forged and fabricated and therefore, they should be declared as null and void. No evidence was led by the plaintiff to show how and why the said documents are claimed to be forged or fabricated. The documents dated 10.07.2018 were eventually led in evidence as Ex.DW1/1 (colly.) and Ex.DW1/2 (colly.) [detailed at serial no. 1 and 2 of Table-3; these were claimed to be executed by Munna Khan in favour of Bashiran/D-8]. No contemporary admitted signatures/thumb impressions of Munna Khan were brought on record by plaintiff so as to compare them with the said documents which may show that the said documents are forged or fabricated. It is one thing to say that contesting defendants have failed to prove a valid oral gift under Muslim Law in favour of

Bashiran/D-8 given by Munna Khan. But, it is a different thing to say that the said documents are forged and fabricated. Since there is no evidence to show that the said documents are forged or fabricated, the issue qua the said documents is liable to be decided against the plaintiff.

108. Similarly, with respect to documents dated 17.01.2022 which pertain to Ex.DW1/3 (colly.) and Ex.DW1/4 (colly.) [detailed at serial no. 3 and 4 of Table-3 above; with these documents executed by Bashiran/D-8 in favour of her daughter-in-law/Shahnaz Begum/D-4], there is no evidence on record to show that they are forged or fabricated. No contemporary admitted signatures/thumb impressions of Bashiran/D-8 or Shahnaz Begum/D-4 were brought on record by plaintiff so as to compare them with the said documents which may show that the said documents are forged or fabricated. It is one thing to say that contesting defendants have failed to prove a valid oral gift under Muslim Law in favour of Bashiran/D-8 given by Munna Khan; or that Bashiran/D-8 did not have the capacity to gift the suit properties to Shahnaz Begum/D-4. But, it is a different thing to say that the said documents are forged and fabricated. Since there is no evidence to show that the said documents are forged or fabricated, the issue qua the said documents is liable to be decided against the plaintiff.

109. Accordingly, the issue under consideration i.e. issue no. (iii) is decided against the plaintiff.

Issue No. (ix)

(ix) *Whether the suit has not been properly valued for the purpose of court fees and jurisdiction ? OPD*

110. The contesting defendants did not lead any evidence to show how the suit has not been properly valued for the purposes of court fees or jurisdiction. The valuation para 26 made in the plaint values each of the reliefs sought from the court for the purposes of court fees. The suit is also valued for the purposes of jurisdiction. The same appears to be in order and thus, in the absence of any evidence to the contrary, **the issue no. (ix) is decided against D-1 to D-4 and D-8 to D-11.**

Reliefs:

111. In view of the findings returned above, the suit is decreed with following reliefs:
- i. Parties detailed in the Table below are given a preliminary decree of partition qua the two properties described in Table-4 below with they being entitled to the share shown in column C.

TABLE-4		
S. No. [A]	Description of Property [B]	Share holders with their respective shares [C]
1.	Property No. 1: H. No. C-41/15, Out of Khasra No. 139/2, Gali No. 9, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 100 square yards (i.e. build up property).	Plaintiff/Sitara: 1/6 share. D-1/Sahib: 5/96 share. D-2/Samad: 5/96 share. D-3/Ayesha: 5/192 share. D-5/Salma: 1/6 share. D-6/Rehana: 1/6 share.
2.	Property No. 2: C-41/18, Out of Khasra No. 142/2, Gali No. 10, North Ghonda, Near Jama Masjid, situated at Village Ghonda Gujran Bangar, Illaqa known as Shahdara, Delhi-110053 measuring 120 square yards.	D-7/Rizwanwa: 1/6 share. D-8/Bashiran: 1/8 share. D-9/Mumtaaz: 5/192 share. D-10/Nargis: 5/192 share. D-11/Neha: 5/192 share.

- ii. Plaintiff is also entitled to a preliminary decree of rendition of accounts against D-8/Bashiran qua the rent received by her from property no. 2. Parties, in terms of the preliminary decree of partition, shall be entitled to the share in the said rent to be determined as per the said decree. This shall be from the date of filing of the suit i.e. 22.10.2022 till the settlement of accounts.
- iii. Plaintiff is also entitled to a decree of permanent injunction thereby restraining the defendants or any person claiming through or under them from creating any third party interest in the suit properties to the extent of plaintiff's share therein till the suit properties are divided by metes and bounds.
- iv. Costs are also awarded to plaintiff.

112. Let a decree-sheet be prepared.

**Announced in the open court
on 21.05.2026**

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