

IN THE COURT OF SH KISHOR KUMAR,
ADDITIONAL DISTRICT JUDGE-04,
NORTH DISTRICT : ROHINI COURTS : DELHI

CS DJ No. 206/2019
CNR no. DLNT01-003704-2019

Ms. Neema

D/o Late Sh. Om Prakash
R/o Plot No.40, FF, Gali No.3,
Mukundpur, Part-2, Libaspur,
Delhi-110042.

.....Plaintiff

Versus

1.) Ms. Kiran

D/o Late Sh. Om Prakash
R/o N-15, A-69, Dhirpur,
Indira Vikas Colony, Delhi.

2.) Ms. Usha

D/o Late Sh. Om Prakash
R/o Part-2, Gali No.10,
Surender Colony, Jharoda Village,
Delhi.

3.) Ms. Nirmala @ Lali

D/o Late Sh. Om Prakash
R/o Plot No.40, SF, Gali No.3,
Mukundpur, Part-2, Libaspur,
Delhi-42

4.) Ms. Shalu

D/o Late Sh. Om Prakash
R/o Plot No.40, FF, Gali No.3,
Mukundpur, Part-2, Libaspur,

Delhi-42

5.) Sh. Arvind

S/o Late Sh. Om Prakash
R/o Plot No.40, FF, Gali No.3,
Mukundpur, Part-2, Libaspur,
Delhi-42

.....Defendants

Date of Institution	:	26.04.2019
Date of Arguments	:	14.03.2024
Date of Order	:	28.03.2024
Final Outcome	:	Preliminary Decree passed

JUDGMENT OF PRELIMINARY DECREE

1. The plaintiff has filed the present suit for partition and permanent injunction stating inter alia that plaintiff and defendants are real sisters and brother and their father expired on 17.05.2018 and mother expired in the year 2002. They left behind property bearing plot no.40, Measuring about 100 sq yds, Gali No.3, Mukundpur, Part-2, Libaspur, Delhi-110042 (**hereinafter be referred to as the ‘suit property’**) and the same is in legal and constructive possession of the plaintiff. Defendants no.1 to 4 are married sisters and are settled in their matrimonial homes. The suit property consists of ground, first and second floor. The defendant no.4 and 5 have developed an evil eye to grab the entire property from the plaintiff. The defendant no.5 has taken all title documents of the suit property and also let out the ground floor and three rooms

of second floor and enjoying the rent solely. The plaintiff asked the defendants to give her share, but they flatly refused the same and even on 02.04.2019, defendants forcibly tried to dispossess the plaintiff from the suit property. The plaintiff also came to know that unknown persons are inspecting the suit property along with defendants. Hence, the present suit.

2. The defendants have been served with summons of the present suit after which they put their appearance, however, despite opportunity, they failed to file written statement and accordingly, vide order dated 11.02.2020, their right to file written statement had been closed. Thereafter, the defendants stopped appearing in the present case and, thus, vide order dated 20.05.2022 they have been proceeded ex parte.

3. On the basis of pleadings on record, following issues were framed for trial vide order dated 20.05.2022 :

1.) Whether the plaintiff is entitled for the decree in favour of plaintiff and against the defendants directing them to partition the property bearing no.40, measuring about 100 sq yards, Gali No.3, Mukundpur, Part-2, Libaspur, Delhi-110042 in 6 equal shares as well as to demarcate the exclusive 1/6th share of plaintiff.

OR

A Commissioner may be appointed to effect the peaceful partition of the above said property and sold out the same by giving exclusive share to the plaintiff, prayed for ? OPP

2.) Whether the plaintiff is entitled to a decree of possession in favour of plaintiff and against defendant restraining the defendants from transferring/selling/creating any third party interest in the suit property, as prayed for ? OPP

3.) Relief.

4. In ***Tm 25 Holding Bv vs Uma Manja Shivappa, CS (COMM) 78/2021***, Hon’ble Delhi High Court has held that “*in view of the non-appearance on behalf of the Defendant despite service, this Court is of the opinion that no ex parte evidence would be required in this matter, in view of the decision of the ld. Single Judge of this Court in [Disney Enterprises Inc. & Anr. v. Balraj Muttneja &Ors. \[CS \(OS\) 3466/2012 decided on 20th February, 2014\]](#). The same has been reiterated by the Court in [S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors. \[210 \(2014\) DLT 381\]](#), as also, in [United Coffee House v. Raghav Kalra and Ors. \[2013 \(55\) PTC 414 \(Del\)\]](#).”*

5. Though, the issues in this case have been framed, however, since there is no defence of the defendants and the defendants have also been proceeded ex parte, in view of the law laid down in ***Tm 25 Holding Bv(supra)***, I am of the considered opinion that there is no need to record ex parte evidence and the material placed before the court by the plaintiff is sufficient to decide the matter in issue.

6. As per the case of plaintiff, the plaintiff and defendants are real sisters and brother and their father expired on 17.05.2018 and mother expired in the year 2002, left behind property bearing plot no.40, Measuring about 100 sq yds, Gali No.3, Mukundpur, Part-2, Libaspur, Delhi-110042 in which the defendants refused to give share of the plaintiff to her.

7. During the pendency of the case, defendant no.1 and 3 moved application under Order IX Rule 7 CPC for setting aside ex parte order which was dismissed vide order dated 15.04.2023. Perusal of the said application shows that defendant no.1 and 3 stated that all the defendants and plaintiff are real sisters and brother and they all are having equal share in the suit property being legal heirs of their deceased father.

8. On the basis of pleadings and material placed on record and also the discussion, hereinabove, I am of the considered view that plaintiff is entitled to 1/6th share in the suit property.

Relief

9. In view of my above discussion, a preliminary decree is passed in favour of the plaintiff and against the defendants and the plaintiff is held entitled for 1/6th share in the suit property i.e. property bearing plot no.40, Measuring about 100 sq yds, Gali No.3, Mukundpur, Part-2, Libaspur, Delhi-110042.

10. Cost of the suit is also awarded in favour of the plaintiff.
11. Decree sheet be prepared accordingly.

**Announced in the open court on
28th day of March, 2024**

**(Kishor Kumar)
ADJ-04, North District,
Rohini Courts, Delhi**