

IN THE COURT OF DISTRICT JUDGE-03
NORTH DISTRICT, ROHINI COURT, NEW DELHI
PRESIDING OFFICER MS. AANCHAL, DHJS



CNR No. DLNT010090082017

CS No. CS DJ/809/2017

In the matter of :-

1. Vijay Pal Singh @ Jai Pal Singh,
S/o Sh. Narain Singh,
R/O 43, Village- Qadipur,
Delhi.
 2. Maj (Retd) R.C. Rana,
S/o Sh. Narain Singh,
R/o C-42, Green Park,
New Delhi
-Plaintiffs

Versus

1. Harpal Rana @ Gullu,
 2. Hemant Rana
 3. Sudhir Rana,
All s/o of Lt. Sh. Ram Kishan,
R/o Village- Qadipur,
Delhi-110036.
 4. Iqbal Bahadur,
S/o Lt. Sh. Brij Raj Saran Singh,
R/o H. No. 17, Block-18,
Sector-4, Shri Badri Nath Apartments,
Dwarka, New Delhi.
-Defendant

Date of filing of the suit	:	31.07.2017
Date of pronouncement of judgment	:	07.08.2026

JUDGMENT

1. Vide the suit as stood amended vide amended plaint dated 19.02.2020 through order dated 28.10.2022 passed by Ld. Predecessor of this Court, is filed by plaintiffs against defendants for following relief, :-

- (i) Decree of declaration that plaintiffs are the exclusive owner being successor in interest of Lt. Mr. Rajender Singh in respect of one room on the ground floor and two rooms, verandah, bathroom, kitchen, toilet etc. as shown in red colour and three rooms verandah and bathroom etc. as shown in green colour in site plan as attached with the plaint, in the Old Haveli Complex of Sh. Narain Singh, situated in village Qadipur, Delhi-36 (here-in-after called as suit property). This site plan depicting suit property is later on produced by plaintiff as Ex. PW1/1.
- (ii) Decree of mandatory injunction thereby directing the defendants to remove their belongings from the suit property, in case they have entered the same.
- (iii) Decree of permanent injunction thereby restraining defendant from entering into the suit property and to create 3rd party interest into the suit property and also from interfering in the rightful possession of plaintiff in suit property .

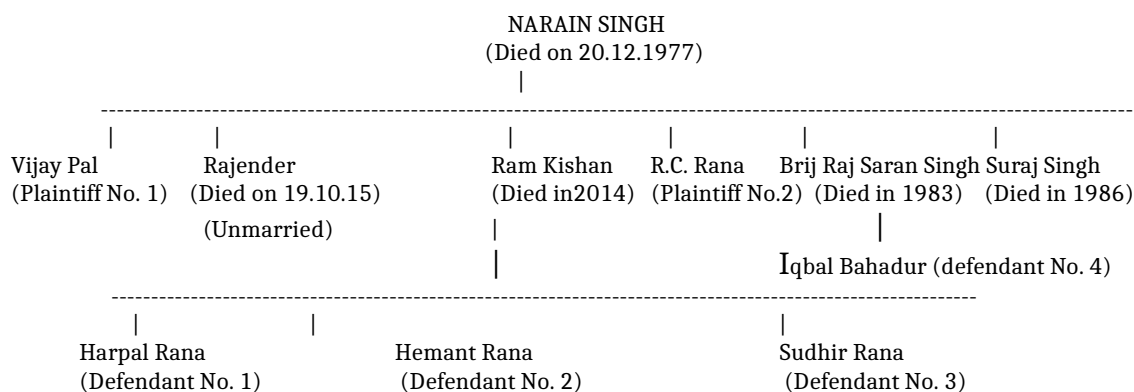
2. The factul matrix of the case is as under :-

Four defendants are the nephews being sons of two brothers of plaintiffs. Lt. Sh Narain Singh had 6 sons namely plaintiff No.1, plaintiff No. 2, Ram Kishan (father of defendant Nos. 1 to 3), Sh. Rajender Singh (now deceased), Brij Raj Saran Singh (father of

defendant No. 4) and Sarup Singh (now deceased). He died on 20.12.1977. His son Rajender Singh (now deceased) became the owner in respect of suit property by family settlement and he had been in the possession of the same.

Sh. Rajender Singh died on 19.10.2015 unmarried and leaving behind no class-I Legal Heirs. His three brothers namely Ramkishan, Brij Raj Saran Singh and Sarup Singh also pre-deceased him in 2017, 1983 and 1986 respectively. So it is pleaded that plaintiffs are the only surviving brothers of late Sh. Rajender Singh and two plaintiffs inherited the suit property.

The family pedigree table depicting these facts is drawn as under :-



It is stated that some parts shown in red lines of suit property in the site plant was locked by servant of deceased Sh. Rajender Singh after his death and lying in same condition. Defendants with a view to grab this suit property had been trying to break open the lock without any right and plaintiffs also came to know that defendant Nos. 1 to 3 are manipulating their names in the electricity records. One such instance of attempt to break open the locks and entering into the possession is stated that of 20.07.2017.

Finally, present suit is filed.

3. The summons for settlement of issues were issued to defendants. Defendant Nos. 1 to 3 were served and they filed their written statement. Defendant No. 4 could not be served by ordinary means and he was served by way of publication in 'Veer Arjun' dated 20.05.2019. Despite this service, defendant No. 4 failed to appear and he was proceeded ex-parte since 24.09.2019.
4. The written statement is filed by defendant Nos. 1 to 3 wherein suit of the plaintiffs is preliminary objected on the ground that no settlement ever took place after the death of late Sh. Narain Singh and suit for declaration is not maintainable without seeking further relief of partition. It is submitted that late Sh. Rajender had relinquished his entire share in property within lal dora at village Qadipur in favour of his brothers during the lifetime of their father i.e. Ram Kishan and Late Sh. Rajender Singh had not been residing in village Qadipur for around 30 years before his death and he used to reside at Dehradun (Uttarakhand) and during his last days, he used to reside with his sister at Buland Shahar. So, Haveli having total area of 3976.5 Sq. Yards belongs to plaintiffs and defendants jointly and share of Lt. Rajender Singh was never determined and never partitioned, so no share of Lt. Sh. Rajender was inherited by plaintiffs. On merits, it is not denied that Sh. Narain Singh expired on 20.12.1997 or pedigree table is rightly depicting the sons/grandsons of Narain Singh and date/year of death of his one son or Sh. Rajender Singh expired on 19.10.2015 without leaving Class-I Legal heirs and that Sh. Rajender Singh

did not execute any will during his lifetime. It is denied that plaintiffs are in the possession of the suit property.

It is also denied that the incident dated 20.07.2017 ever took place and defendants ever intended to enter their names in the record of electricity department. It is stated that plaintiffs did not inherit any property from Sh. Rajender Singh who was himself not owner of any property or any share in the Haveili as on the date of his death and that he had already abandoned/relinquished his share in favour of his all brothers surviving members of family during the lifetime of Ram Kishan. Further, it is also denied that defendant tried to break open the lock or enter into the possession without any right or any parties of suit property has been locked by the servant of Lt. Sh. Rajender Singh. It is also stated that even site plan of only part of Haveli is filed.

Finally, suit of the plaintiff is prayed to be dismissed.

5. The plaintiff filed the replication to the written statements filed by defendant Nos. 1 to 3 wherein submissions made by these defendants are denied and suit filed by the plaintiffs is asserted in totality.
6. On the basis of pleadings, following issues are framed by Ld. predecessor of this Court vide order dated 24.09.2019 :-
 1. Whether defendant Nos. 1 to 3 are the co-sharers in the suit property ? OPD
 2. Whether plaintiff is entitled for decree of declaration, as prayed for ? OPP.
 3. Whether plaintiff is entitled for decree of mandatory injunction, as prayed for ? OPP.

4. Whether plaintiff is entitled for decree of permanent injunction, as prayed for ? OPP.
5. Relief?
7. Plaintiff No. 1 appeared into the witness box as PW1 and he relied upon following documents :-

Site plan	Ex. PW1/1
Electric bills of the suit property	Ex. PW1/2 to Ex. PW1/4
Electric bill dated 17.06.2016	Ex. PW1/5

8. On the other hand, Mr. Sudhir Rana, defendant No. 3 appeared as DW-1 into the witness box and he relied upon only one document i.e. site plan as Ex. DW1/1.
9. Final arguments have been heard. Record is perused carefully. Now, this court is proceeding to give issue wise findings which are as under :-

Issue No. 1 & 2

1. Whether defendant Nos. 1 to 3 are the co-sharers in the suit property ? OPD
2. Whether plaintiff is entitled for decree of declaration, as prayed for ? OPP.
10. The onus to prove issue No. 1 lies upon the defendants whereas the onus to prove issue No. umber 2 lies upon the plaintiff. These two issues are being taken up together since the facts in regard to these issues are overlapping.

Now, before proceeding to decide on disputed facts, it is important to pen down the facts which are not disputed hence, admitted by the parties in their pleadings. There is no dispute between the

parties that the suit property was originally owned by Narain Singh who expired on 20th of December 1977 intestate and he had 6 sons namely Vijaypal, Rajender Singh, Ram Kishan, R.C. Rana, Brijpal Saran Singh and Suraj Singh. It is also not in dispute that Ramkishan, father of defendant number 1,2,3 expired in the year 2014 whereas Brijpal Saran singh father of defendant no. 4 had expired on 1983 and Suraj Singh had expired in 1986. There is also no dispute to this fact that Mr. Rajender Singh in respect of whose properties, parties to the suit are disputing, had expired on 19.10.2015 unmarried.

The Hindu Succession Act, 1956 is the statute applicable in respect of the succession of the properties of a Hindu dying intestate. As per Section 8 of this Act, the property of a male Hindu dying intestate shall devolve upon firstly the heirs being the relatives specified in Class-I of the Schedule. The relatives as specified in Class-I of the schedule are as under :-

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son 1 [son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son.

In case, a Hindu male dies leaving no relative falling in class-I of the schedule, his properties would be succeeded by Class-II legal heirs only. The schedule enlists the Class-II legal heirs as under :-

- I. Father.*
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.*
- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.*
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.*
- V. Father's father; father's mother.*
- VI. Father's widow; brother's widow.*
- VII. Father's brother; father's sister.*
- VIII. Mother's father; mother's mother.*
- IX. Mother's brother; mother's sister.*

As per plaintiffs, the surviving brothers of late Mr. Rajender Singh do fall in second entry of Class-II Legal Heirs whereas his brother's sons i.e. defendant No. 1 to 4, fall under fourth entry of Class-II Legal Heirs, so the suit property should devolve only upon the plaintiffs to the exclusion of defendant Nos. 1 to 4. The question before this Court is whether the heirs falling into Second category and fourth category of Class-II would take simultaneously. Section 9 of The Hindu Succession Act, 1956 answers it. It envisages that :-

9. ***Order of succession among heirs in the Schedule.***—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Hence, the heirs of second entry in class-II i.e. plaintiffs shall be preferred to those in the fourth entry i.e. four defendants. But the declaration of plaintiffs being the exclusive co-owners in respect of the suit property is being prayed by the plaintiffs pleading that there had been a family settlement after death of Mr. Narain Singh.

This family settlement is denied by the defendant Nos. 1 to 3 in totality. The onus to prove the existence of legal and binding family settlement amongst all the legal heirs of Mr. Narain Singh lies upon the plaintiffs. Hence, this Court is proceeding to appreciate the evidence in respect of existence of family settlement as pleaded by the plaintiffs.

11. The suit property is admittedly the part of Old Haveli Complex of Lt. Mr. Narain Singh situated in Village- Qadipur, Delhi-110036. The defendants submitted in para No. 1 of preliminary objection of their written statement that complete site plan of entire old Haveli is not placed on record. This fact is admitted by the plaintiffs in their replication. The plaintiff No. 1 appearing into the witness box as PW-1 deposed in the lines of the facts pleaded by him. He was cross-examined at length. He did not state the total area of Haveli but deposed that there are more or less about 20 rooms on ground floor, 1st Floor and 2nd floor of the Haveli and all these 20 rooms and alleged share of Lt. Mr. Rajender Singh are part of same Haveli complex which has one main entrance. During this cross-examination dated 19.10.2024, the plaintiff further disclosed that besides his six sons, Late Mr. Narain Singh @ Rao Sahab also left behind his four daughters namely Ms. Rajendri, Ms. Raj Bahaduri, Ms. Ram Chanderi and Ms. Raj Dulari. He also admitted that his all brothers and sisters used to reside with his parents in this Haveli. So, it came on surface during trial that Mr. Narain Singh had left ten children as his Class-I legal heirs as daughters of deceased are well included in list of Class-I legal heirs. The plaintiffs did not whisper this in their plaint and they did not even

plead that any family settlement arrived making four daughters of Lt. Mr. Narain Singh a part. When posed during cross-examination, plaintiff No. 1 just answered that “*I never heard that 40 years back, my sisters were also having rights in the property of my father*”. This answer serves no reason to exclude four daughters of Mr. Narain Singh for inheritance or for entering into family settlement, if any, later on. Everyone is presumed to be aware of law. This is based on Latin maxim *ignorantia juris non-excusat*. Ignorance of the law excuses non one. It is the foundation rule that prevants people from escaping liability simply by claiming they were unaware a law existed. He also stated that his sisters have never been in the picture and there was no question of settlement with the sisters. He admitted that he did not inform or send any notice to any of his sisters or their children with regard to the claim in the portion of Haveli. These answers given by plaintiff No. 1 prove that four daughters of Lt. Mr. Narain Singh were excluded from settlement, if any held, after death of Mr. Narain Singh. In **M.N. Aryamurthy Vs. M.D. Subbaraya Setty (1972) 4 SCC 1**, Hon’ble Apex Court held that under Hindu Law, a family arrangement must be unanimously accepted by all co-sharers to be binding and if unanimous consent is lacking, the family settlement fails to operate as a binding agreement. Thus, taking into account the very fact that four daughters of Mr. Narain Singh were not even included for any kind of family settlement, as admitted by plaintiff No. 1, it is safely inferred that their consent was never obtained, therefore, the question of family settlement being valid or binding does not arise and it is held that plaintiffs have failed to discharge the burden of proving that there had been a binding and

legal family settlement dividing the estate left behind by Mr. Narain Singh, amongst his legal heirs. Consequently, the declaration sought by the plaintiffs founded on family settlement cannot be granted.

12. It is strongly argued on behalf of the plaintiffs that the conduct of parties exhibit a partition amongst the legal heirs of Lt. Mr. Narain Singh. It is argued that though no formal partition took place, Ram Kishan was given a certain portion out of the Haveli complex where he raised construction over it and similarly, Lt. Rajender Singh himself chose to live and built over the portion which constitute the suit property and it is admitted by defendant No. 3 appearing as DW-1 during his cross-examination that since his age of discretion, he had been seen all his uncle's family living separately and having a separate kitchen and there is separate electric connection in the name of Lt. Sh. Rajender Singh and all the agricultural land of all the legal heirs of Mr. Narain Singh are separately recorded in their separate names in the Khatuni in the last more than 50 years. This argument is countered on behalf of the defendants and it is stated that mutation entries in the record are not the proof of partition and there could be a number of reasons for legal heirs to continue to live in a particular portion without the property being partition and merely because of this continued use of a particular portion, settlement cannot be inferred.

- 12.1 This Court has given thoughtful consideration to the contentions made. The burden lies heavily upon the plaintiffs to prove that if legal heirs are living in separate portion in the property inherited by them, it is a legal partition rather than a convenient arrangement

of living. The mere occupation of different portions of the property, does not amount to partition. Reference in this regard can be made to **Rameshwar Prasad Gupta Vs. Rajender Kumar Gupta**, MANU/DE/7647/2011 and **Abhay Sapru Vs. Chitralekha Bakshi**, MANU/DE/0113/2008 wherein Hon'ble Court hold that possession of different portions of the property by different parties is merely an arrangement for convenience and does not constitute a partition. In **Abhay Sapru (Supra)**, Hon'ble High Court of Delhi held that the arrangement is binding on the parties and the property shall be enjoyed by the parties strictly in accordance with the terms of the arrangement, but the same does not constitutes a partition by metes and bounds for all purposes and the family arrangement would continue to bind the parties till so long as the property is not actually partitioned between parties by metes and bounds. Dealing with the same point, Hon'ble High Court in the case of **Hari Ram Vs. Lal Om Prakash**; 2003 IV AD Delhi 124 rejected the contention of oral partition. The Relevant para 18 and 20 are being reproduced hereinbelow :

“18. Contention of the Counsel for the defendant that oral partition has been acted upon inasmuch as portions in the suit property are in separate occupation and the parties have carried out additions, alterations, renovations in their respective portions without any objection and interference by other party and that he along with the plaintiff has been pooling equal share towards payment of house tax and further he had also made addition, alterations or renovations in their portions almost at the same time when the defendant has done it some 20 years back has no significance so far as suit for partition is concerned as there is common entrance and staircase in the property. The parties are in possession of portions on ground floor, first floor, second floor and terrace and suit property cannot be partitioned as these are not vertically or

otherwise single unit. All these facts when taken in totality make out a case of two brothers living peacefully in their respective portions but not a case of oral family agreement of partition of the property. Had there been any intention on the part of father of the parties to give equal shares in the property, there was no difficulty in executing the Will. Merely because parties have been living for more than 30-40 years in different portions of the house separately does not mean that such an agreement tantamount to agreement for partition of property.

20. The instance of two brothers living in the two portions of a house they co-owned by way of inheritance does not mean that oral partition had taken place. It was just a mutual arrangement between the parties and inasmuch who had more need, he was allowed to occupy some extra portion but such an arrangement does not amount to oral agreement of partition of the suit property in equal shares.”

In case in hand too, plaintiffs have not produced the complete site plan of Haveli to suggest that the entire Haveli of Lt. Mr. Narain Singh was divided vertically but it is admitted by them that the Haveli has one common entrance. There is no denial that Mr. Rajender Singh took last breath in the house of his sister. Plaintiffs only plead that an old servant of Mr. Rajender Singh locked the suit property but no such servant is produced in witness box and during trial as well, when commissioner was appointed to visit the suit property, plaintiff No. 1 approached to the Court with the plea that keys are not produced by defendants. If it is so, exclusive possession of Lt. Mr. Rajender Singh could also not be inferred. Hence, pleadings of parties and material produced on record does not make out a case more than that of family arrangement.

12.2 So far as the mutation entries in record are concerned, these are also not the evidence for status of a party in respect of the suit

property. These are entries only for fiscal purpose and no question of title is determined before making such entries by the concerned authorities. In **Bharat Singh And Anr vs Bhagirathi, 1966 SCR (1) 606**, Hon'ble Apex Court did not deny the status of joint family despite presence of entries in mutation record in individual name and it was held that *"It is not for the Revenue Authorities to make any regular enquiry about the devolution of title. They make entries for revenue purposes about the person who is considered prima facie successor of the deceased."*

Thus, the sole contentions made on behalf of the plaintiffs do not prove the partition amongst the legal heirs of late Mr. Narain Singh.

13. In totality, the evidence produced on record and pleadings have brought before this Court that Lt. Mr. Narain Singh left ten Class-I legal heirs i.e. six sons and four daughters and plaintiffs pleaded that an oral family settlement in respect of the property left behind by Mr. Narain Singh took place but (1) plaintiffs have not brought on record the details of the specific property that Mr. Narain Singh had left and qua which alleged oral family settlement took place (2) admittedly four daughters of Mr. Narain Singh despite being Class-I legal heirs, were not consulted at all (3) plaintiffs failed to state the time or date or place when this alleged family settlement took place (4) it is not brought on record what the family settlement was. What was the measurement of the property that was being settled in this family settlement? How much share was given or settled to/with which of the legal heirs ? Hence, the plaintiffs have failed to prove the existence of any family

settlement amongst the legal heirs of late Mr. Narain Singh. Consequently, as plaintiffs have failed to discharge the burden lying upon them, they are held not entitled of decree of declaration.

14. It is the case of the defendants that Mr. Rajender Singh had abandoned/ relinquished his share in favor of all of his brothers or surviving members of the family during the lifetime of Ramkishan i.e. before 2014. But no evidence whatsoever was led by defendants in this regard and like plaintiffs, defendants too, did not whisper the date, day or time when such relinquishment of share was done by Lt. Mr. Rajender Singh. What were the circumstance ? Who was present at the time of relinquishment ? What could be probable reason that Mr. Rajender Singh would have relinquished his share in favour of defendants and none else amongst the other family members ? Hence, they have failed to prove the relinquishment by Lt. Mr. Rajender Singh. Otherwise too, as it is not proved on record that property of Lt. Mr. Narain Singh has been partitioned and the share of Lt. Mr. Rajender Singh has not been crystallized, the question of defendants being co-sharer in the suit property cannot be adjudged.
15. Hence, in view of the above discussion, issue no. 1 is decided against the defendants and issue No. 2 is decided against the plaintiffs.

Issue No. 3 & 4

3. Whether plaintiff is entitled for decree of mandatory injunction, as prayed for ? OPP.

4. Whether plaintiff is entitled for decree of permanent injunction, as prayed for ? OPP.

The onus to prove these issues lie upon the plaintiffs.

The relief of mandatory and permanent injunction is a relief consequential to the relief of declaration. As the plaintiffs have failed to discharge the burden of proving the issue No. 2 in their favour, plaintiffs are also held unable to discharge the burden to prove the issues in hand. Hence, these two issues are decided against the plaintiffs.

Issue No. 5

Relief.

16. In view of the findings given on the issues involved in the present case, plaintiffs are held entitled for no relief and the suit filed by them is dismissed.

No order as to the cost.

Decree-sheet be prepared accordingly.

Thereafter, file be consigned to record room.

***Announced in open
Court on 07.08.2026 at 3:00 PM.***

**(Aanchal)
District Judge-03
North District, Rohini Courts, Delhi(ak)**