

03.07.2026

Present: Sh. Bhupender M. Sharma, counsel for the plaintiff.

As per report of ahlmad, defendant no.2 is served.

Counsel for plaintiff states that as per report of process server, defendant no.2 did not accept summons of defendant no.1 on the pretext that he is outside. She ought to have accepted the summons being family member.

Be awaited for presence on behalf of defendants till 02.00 p.m.

At 02.03 p.m.

Present: Sh. Bhupender M. Sharma, counsel for the plaintiff.

Defendant no.2 is served personally.

As per report of process server, defendant no.2 did not accept summons of defendant no.1 on the pretext that he is outside. She ought to have accepted the summons being family member.

Defendant no.1 is deemed to have been served.

Counsel for plaintiff has even filed on record tracking reports to show service delivery upon defendants.

Since, none has appeared on behalf of the defendants at this stage, defendants are proceeded ex-parte.

ORDER ON APPLICATION U/O 39 RULE 1 AND 2 CPC

1. Counsel for plaintiff presses his application u/o 39 rule 1 and 2 CPC dated 28.03.2026.
2. Counsel for plaintiff states that suit property is property bearing No. C-5, ad-measuring 173.55 sq. yds., Village Samaypur, Delhi.
3. It is argued that defendants be restrained from creating any third party

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interest in the suit property till disposal of suit as documents dated 17.09.2009 is under challenge. Plaintiff apprehends that on the basis of Gift Deed dated 13.02.2024 executed by defendant no.1 – husband in favour of defendant no.2 wife third party interest may be created in the suit property.

SCOPE OF INTERVENTION BY COURT :

4. In the case of **Gujarat Bottling Co. Ltd. v. Coca Cola Co. reported in 1995 (5) SCC 545**, the Hon'ble Supreme Court, while discussing the factors to be considered by the Courts in exercise of the discretion under Order XXXIX Rule 1 & 2 CPC, has held that:

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion, the Court applies the following tests:

- (i) Whether the plaintiff has a prima facie case;
- (ii) Whether the balance of convenience is in favour of the plaintiff;
- (iii) Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory is disallowed.”

**APPLYING THE ABOVE CONSIDERATIONS TO FACTS OF
PRESENT CASE**

5. The Court has considered that it is not necessary for the plaintiffs to prove his case to the hilt and if a fair question is raised for determination, it should be taken that a prima facie case has been established.

6. This court has heard the submissions on behalf of the plaintiff. The Court has considered the probability of success in the trial and the strength of the case

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of the plaintiff. Defendants are already ex-parte. It is essential to preserve the suit property during pendency of the case.

7. Perusal of record shows that suit property is property bearing No. C-5, ad-measuring 173.55 sq. yds., Village Samaypur, Delhi.

8. It is rightly argued on behalf of plaintiff that defendants be restrained from creating any third party interest in the suit property till disposal of suit as documents dated 17.09.2009 is under challenge. Plaintiff apprehends that on the basis of Gift Deed dated 13.02.2024 executed by defendant no.1 – husband in favour of defendant no.2 wife third party interest may be created in the suit property.

9. Defendants are restrained from creating any third party interest in the suit property till disposal of suit.

10. **Application u/o 39 rule 1 and 2 CPC dated 28.03.2026, is disposed off in the above terms.**

11. Now, to come up for ex-parte PE by way of affidavit on 21.09.2026.

(VIKRAM BALI)
DISTRICT JUDGE-2/NORTH/ ROHINI
COURT/DELHI/03.07.2026