

SAURABH KUMAR Vs. ABHISHEK KUMAR AND ANR.

20/07/2026

Present : Ms. Monika Ghai and Sh. Sharad Aggarwal,
Ld. Counsels for plaintiff.
Sh. Shagun Mehta, Ld. Counsel for defendant.

ORDER ON APPLICATION
UNDER ORDER 39 RULE 1 & 2 CPC

1. Ld. Counsel for the plaintiff presses her application under Order 39 Rule 1 & 2 CPC dated 21/08/2024.

FACTUAL MATRIX

2. The plaintiff is brother of defendant no. 1. Sh. Vijay Kumar – defendant no. 2 (father of plaintiff and defendant no. 1) and Late Smt. Sulochna Kumari (mother of plaintiff and defendant no. 1) were owners of suit property i.e. property bearing no. G – 6/15, LIG Flat, Ground Floor, Sector – 15, Rohini, Delhi – 110089 (herein-after referred to as suit property).

3. Prayers in the suit are for partition of suit property, permanent injunction that defendants do not create any third party interest over the suit property. Prayer for rendition of accounts by way of directing defendant no. 1 to render through accounts of money / rent receipt / realized form the tenants from the suit property is also made.

FIRST ARGUMENT – ON PRIMA FACIE CASE

4. Ld. Counsel for plaintiff argues that the mother of the plaintiff Late Smt. Sulochna Devi had expired on 25/05/2023. She is survived by plaintiff – her 1st son, defendant no. 1 – her 2nd son and defendant no. 2 – her husband. Plaintiff is thus, entitled to share of Late Smt. Sulochna Kumari. Hence, plaintiff has strong prima facie case. Injunction that no third party interest is created in the suit property, is therefore pressed.

5. Per contra, Ld. Counsel for defendants argues that admittedly, joint owner of the suit property – Sh. Vijay Kumar i.e. defendant no. 2 is alive. In his life time, partition of the suit property is not possible and thus, there is no prima facie case.

6. Per contra, Ld. Counsel for defendants further argues that there are no title documents to show that Sh. Vijay Kumar & Late Smt. Sulochna Kumari are owners of suit property. DDA has only given lease hold rights. Same cannot be partitioned.

7. Per contra, Ld. Counsel for defendants further argues that defendant no. 2, in any case, cannot be restrained.

8. Per contra, Ld. Counsel for defendants further argues that suit is not maintainable as relief of possession has not been sought.

SECOND ARGUMENT – ON BALANCE OF CONVENIENCE

9. Ld. Counsel for plaintiff further argues that admittedly, defendant no. 1 is in possession of suit property. In case, he is restrained from creating any third party interest, no harm will be caused to him. It is essential to preserve the suit

property during pendency of the case and thus, balance of convenience lies in favour of plaintiff.

10. Per contra, Ld. Counsel for defendants argues that it is own case of the plaintiff that he had vacated the suit property on 14/07/2018. It is case of the defendant that Late Smt. Sulochna Kumari – mother of the plaintiff and defendant no. 1 had invested funds from her own savings and had given House No. A – 2/70, 3rd Floor, Sector- 16, Rohini, Delhi to the plaintiff.

THIRD ARGUMENT – ON IRREPARABLE INJURY

11. Ld. Counsel for plaintiff further argues that in case any third party interest is created by defendants, then the purchaser may take plea of being a bonafide purchaser. Her present suit for partition will be prejudiced. Same cannot be compensated in terms of money. It is thus argued that the plaintiff will suffer irreparable injury, if her share is also alienated by the defendants.

12. Per contra, Ld. Counsel for defendant argues that no irreparable injury will be caused.

SCOPE OF INTERVENTION BY COURT :

13. 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.”

FINDINGS

14. This Court has heard the rival submissions of the parties and perused the relevant record with their assistance. The Court has considered the probability of success in the trial and the comparative strength of the cases of the respective parties before it. The Court has considered that it is not necessary for the plaintiffs to prove their 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.

FINDINGS ON FIRST ARGUMENT – ON PRIMA FACIE CASE

15. Ld. Counsel for plaintiff has rightly argued that the mother of the plaintiff late Smt. Sulochna Devi had expired on 25/05/2023. She is survived by plaintiff – her 1st son, defendant no. 1 – her 2nd son and defendant no. 2 – her husband. Plaintiff is thus, entitled to share of Late Smt. Sulochna Kumari. Hence, plaintiff has strong prima facie case. Injunction that no third party

interest is created in the suit property qua share of plaintiff, is therefore rightly pressed.

16. Submissions on behalf of defendants that admittedly, joint owner of the suit property – Sh. Vijay Kumar i.e. defendant no. 2 is alive. In his life time, partition of the suit property is not possible and thus, there is no prima facie case are without merits. These submissions are rejected as the share of Late Smt. Sulochna Kumari, after her death does not stay in abeyance. Inheritance does not stay in abeyance thus, plaintiff can claim share of his mother, after her death. Suit, as framed, is maintainable.

17. Submissions on behalf of defendant that there are no title documents to show that Sh. Vijay Kumar & Late Smt. Sulochna Kumari are owners of suit property. DDA has only given lease hold rights. Whether same cannot be partitioned will be a moot point during the trial. At this stage, it is important to preserve the suit property during pendency of the suit.

18. It is rightly argued by Ld. Counsel for the defendants that defendant no. 2, in any case, cannot be restrained. However, the share of Late Smt. Sulochna, to which plaintiff is entitled, is required to be protected.

19. Submissions on behalf of defendant that suit is not maintainable as relief of possession has not been sought are without merits. These submissions are rejected as parties, after death of Late Smt. Sulochna Kumari, are co-owners. Each co-owner is deemed to be in possession of every inch of property on behalf of others. Suit, as framed, is maintainable.

FINDINGS ON SECOND ARGUMENT – ON BALANCE OF CONVENIENCE

20. Ld. Counsel for plaintiff further rightly argues that admittedly, defendant no. 1 is in possession of suit property. In case, he is restrained from creating any third party interest, no harm will be caused to him. It is essential to preserve the suit property during pendency of the case and thus, balance of convenience lies in favour of plaintiff.

21. Submissions on behalf of defendants that it is own case of the plaintiff that he had vacated the suit property on 14/07/2018. The case of the defendant that Late Smt. Sulochna Kumari – mother of the plaintiff and defendant no. 1 had invested funds from her own savings and had given House No. A – 2/70, 3rd Floor, Sector- 16, Rohini, Delhi to the plaintiff will be a moot point during the trial. It is for defendant to prove during the trial that plaintiff had separated and was given his due share. At this juncture, the suit property is required to be protected, specially when Late Smt. Sulochna Kumari has not executed any Will in favour of defendants.

FINDINGS ON THIRD ARGUMENT – ON IRREPARABLE INJURY

22. Ld. Counsel for plaintiff has rightly argued that in case any third party interest is created by defendants, then the purchaser may take plea of being a bonafide purchaser. Her present suit for partition will be prejudiced. Same cannot be compensated in terms of money. It is thus rightly argued that the

plaintiff will suffer irreparable injury, if her share is also alienated by the defendants.

23. Submissions on behalf of defendant that no irreparable injury will be caused are without merits. These submissions are rejected as plaintiff cannot be compensated in terms of money.

24. **Application under Order 39 Rule 1 & 2 CPC dated 21/08/2024 is allowed. Defendants are directed not to alienate share of the plaintiff in the suit property i.e. 16.66% during pendency of the suit.**

25. At request of the Ld. Counsel for the plaintiff, to come up for filing of affidavit of admission-denial of documents and framing of issues on **12/10/2026**.

(VIKRAM BALI)
DISTRICT JUDGE-02/NORTH/ROHINI
DELHI/20/07/2026