

**IN THE COURT OF SH. MOHAMMAD EHTESHAM,
DISTRICT JUDGE-03, SHAHDARA DISTRICT,
KARKARDOOMA COURTS, DELHI**

CS No. 1749/16

CNR No. DLSH01-001755-2016

SMT. PRATIBHA SHARMA

...Plaintiff

VERSUS

INDU SHEKHAR SHARMA and anr.

...Defendants

12.07.2025

ORDER

1. Vide this order, I shall dispose off an application moved on behalf of defendant no. 2 under Order XXXVIII r/w Section 151 CPC seeking directions to Defendant no. 1 Sh. Indu Shekhar Sharma to furnish security and attachment before judgment of property bearing no. E – 69, Jhilmil Colony, Delhi – 110095.

2. The defendant no. 1 has opposed the application by filing reply of the above application. The defendant no. 2 also filed rejoinder to the reply filed by the defendant no. 1.

3. The applicant/Defendant no.2 has asserted the following facts in the present application:-

(a). that the Plaintiff has filed the present suit for partition of suit property no. E-69, Jhilmil Colony, Delhi – 110095 and property bearing plot no. SJ-2/215, Situated in Shivalik Ganga Vihar, Village Rurki, District Haridwar, Uttrakhand. Further, the maternal grandmother

/ Smt. Usha Sharma of the defendant no. 2 / applicant passed away intestate on 12.08.2010 leaving behind three legal heirs namely Pratibha Sharma (plaintiff herein), Sh. Indu Shekhar Sharma (defendant no. 1 herein) and Smt. Poonam Pandit (mother of applicant / defendant no. 2). Thereafter, the dispute arose concerning the properties left behind by Late Smt. Usha Sharma and on 28.01.2015, the Hon'ble Delhi High Court had directed the parties to maintain the Status Quo with respect to the title and possession of the suit properties. Despite the order, defendant no. 1 has consistently defied the directions of the Hon'ble High Court by forging a Will dated 05.04.2010 to usurp the legitimate share of legal heirs and thereafter, the defendant no. 1 vide sale deed dated 03.12.2020, 25.11.2022 and 25.11.2022 sold one of the suit property i.e. bearing Plot no. SJ-2/215, situated in Shivalik Ganga Vihar, Village Rurki, District Haridwar, Uttarakhand in violation of Status qua order to third parties, including Smt. Sarita Sharma, Sh. Jai Bhagwan Saini and Smt. Sapna as mentioned in certified copies of sale deeds for an amount of Rs.1,26,00,000/- out of which the defendant no. 1 had received a payment of Rs.60,33,000/- in his bank account and this fact came to the knowledge of the defendant no. 2 / applicant on 31.12.2023.

(b). It is further stated that defendant no. 1 has failed to comply with the Orders dated 10.07.2024, 19.07.2024, 30.08.2024 and 16.11.2024. It is further stated that the defendant no. 1 had usurped the sale consideration amount as mentioned above by transferring the same into his wife's account and also to his account and some of the amount has also been invested by defendant no. 1 in shares and some in other business ventures. Despite the orders of the Court, the defendant no. 1

had not deposited the amount of Rs.60,33,000/- thus, such conduct of defendant no. 1 is sufficient to hold that he will obstruct the execution of the decree if the partition decree is passed.

(c). It is further stated that defendant no. 1 is habitual defaulter and has been engaged in fraudulent disposal of the suit properties to third party despite stay order dated 28.01.2015 of the Hon'ble High Court of Delhi. It is further stated that Defendant no. 1 is carrying out fresh construction on the suit property at Haridwar and at Jhilmil Colony, Delhi. It is further stated that Defendant no.1 is also converting property at Jhilmil Colony into a commercial enterprise and generating substantial income without disclosing the same. It is further submitted that defendant no.1 is diverting the proceeds from illegal sales and rentals into undisclosed sources thereby depriving the other legal heirs of late Smt. Usha Sharma of their rightful share. It is further submitted that action of defendant no. 1 demonstrates calculated and deliberate attempt to defeat the rights of other parties and frustrate the decree that may be passed in favour of parties to the suit.

(d). It is further stated that to secure the interest of the parties to the suit, the property of Jhilmil Colony, Delhi is liable to be attached. It is further stated that since the defendant no. 1 has already disposed off the suit property situated at Haridwar, the Defendant no. 2 is having serious apprehension that defendant no. 1 may also alienate / dispose off the said property.

4. Reply to the above application has been filed by defendant no. 1, wherein he has stated as under :-

(a). The applicant has no *locus standi* to file the present application as he himself is 'defendant no. 2' in the present case and the provisions of the application u/o XXXVIII Rule 5 CPC are only available to the plaintiff and cannot be used to protect the interest of any of the defendants.

(b). It is further stated by Defendant no. 1 that Defendant no. 2/applicant has no *prima facie* case in his favour. It is further stated that in the present case, the defense of the Defendant no. 2 has already been struck off and no interim orders has been passed in his favour till date on his application for grant of stay in connected matter (CS 314/2020). Further, the defendant no. 2 has concealed the fact that he has already lodged his objections with the concerned Registrar regarding execution of the title documents of the suit property.

(c). It is further stated that property at Jhilmil Colony, Delhi is a slum tenements, which even is not partible and is lease hold property by the Slum Department. Rest of the averments have been denied by the defendant no. 1 and prayed for dismissal of the application. Defendant no. 1 has also placed reliance upon a judgment passed by Hon'ble Supreme Court of India titled as Raman Tech. and Process Engg. Co. & Anr. V/s. Solanki Traders in Appeal (Civil) no. 6171/2001 on 20.11.2007.

5. During the course of arguments, Defendant no.1 orally submitted that he was advised that stay Order dated 28.01.2015 passed by the Hon'ble High Court of Delhi was valid only for six months and therefore, he disposed off one of the property situated at Haridwar in the year 2020 and 2022.

6. Rejoinder has been filed by Defendant no. 2 to the reply of the Defendant no. 1, wherein he stated as under:-

(a). Defendant no.1 is continuously violating the directions of the court and has not deposited the sale proceed of Haridwar property in the court.

(b). It is further stated that it is an admitted fact by defendant no. 1 that the Plaintiff and Defendant no. 2 are the co-sharer, therefore, the only fact remains to be adjudicated is that by virtue of the alleged Will dated 05.04.2010, the testator excludes all other LRs except Defendant no. 1 and in order to prove his case, the Defendant no. 1 has failed to produce the original Will dated 05.04.2010. Therefore, there is reasonable chance of a decree being passed in the suit against the defendant no. 1.

(c). It is further stated in the rejoinder that from the act of selling the suit property despite the fact that there is a stay order and usurping the amounts of sale proceeds in to stock market and disposing the same in the family and friend's account clearly shows that defendant no. 1 is *“attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed”*.

(d). Defendant no. 2 has placed reliance *upon following citations:-*

A. Krishna Sheroy v. Ganga Devi G. and ors. 2023 LiveLaw (SC) 778; Azgar Barid (D) by LRs and ors. v. Mazambi @ Pyaremabi and ors. (Civil appeal no. 249/2010 dated 21.02.2022 passed by Hon'ble Supreme Court) and Sardar Govindrao Mahadik V/s. Devi Sahai2”

7. I have carefully gone through the record.

8. One of the arguments of Ld. counsel for defendant no. 1 that applicant /Defendant no. 2 is himself is a defendant and provision of Order XXXVIII CPC can only be exercised by the plaintiff. The argument of Defendant no. 1 cannot sustain in the light of Provision of XXXVIII CPC Rule 1 and Rule 5 which provides that the Court can exercise the power to direct the Defendant to furnish security if the court is satisfy by affidavit or otherwise. Further, it is well settled law that in the partition suit, the position of the Plaintiff and Defendants are interchangeable.

9. The present suit has been filed by the Plaintiff for the partition of two suit properties i.e. Property no. E – 69, Jhilmil Colony, Delhi – 110095 and property bearing plot no. SJ-2/215, Situated in Shivalik Ganga Vihar, Village Rurki, District Haridwar, Uttrakhand. It is an admitted fact that Plaintiff, Defendant no.1 and Defendant no. 2 are the legal heirs of Smt. Usha Sharma. Defendant no.1 has taken a plea that the late Smt. Usha Sharma executed a Will dated 16.04.2012 thereby bequeathed the entire suit properties in favour of the Defendant no.1. Perusal of record shows that a status quo Order with regard to title and possession of both the suit properties was passed by the Hon'ble High Court of Delhi dated 28.01.2015. Perusal of record shows that Defendant no. 1 had filed an application under Order 39 Rule 4 CPC seeking vacation of the stay order dated 28.01.2015. The said application was disposed off vide Order dated 01.09.2021 on the submission of Ld. counsel for Defendant no. 1 that he is not pressing upon the said application.

10. Defendant no.1 has admitted that he executed three sale deeds in favour of subsequent purchasers /Smt. Sarita Sharma (*vide Sale Deed dated 03.12.2020*), Sh. Jay Bhagwan Sharma and Smt. Sapna (*vide Sale Deeds dated 25.11.2022*) in respect of the suit property situated at Haridwar.

11. From the above facts, it is cleared that when the application of the Defendant no. 1 under Order 39 Rule 4 CPC to vacate the stay Order dated 28.01.2025 was disposed of as not pressed on 01.09.2021, he had already executed the first sale deed dated 03.12.2020 in favour of Smt. Sarita Sharma. However this fact was not disclosed by the Defendant no. 1 before the court. Thereafter, the Defendant no. 1 went on to dispose off the remaining portion of the suit property by executing two more sale deeds on 25.11.2022 respectively in favour of Sh. Jai Bhagwan Sahni and Smt. Sapna. Defendant no.1 has been regularly appearing in this matter, however, he intentionally did not disclose these facts as well before the court.

12. Perusal of record shows that despite directions vide Order dated 06.05.2024, Defendant no. 1 has not deposited the entire sale consideration amount received in regard to the above mentioned three sale deeds. Perusal of record shows that Defendant no. 1 has filed detailed affidavit on 27.11.2024 regarding his complete assets and liabilities and submitted that he is not having any balance in his bank accounts as he has suffered huge loss in share trading.

13. The defendant no.2 has argued that defendant no.1 has further transferred some amounts in the bank account of his wife and

son and highlighted the bank account statement of Defendant no. 1 in this regard.

14. Before proceeding further with merits of the application, it is relevant to mention the provision of Order XXXVII Rules 1, 2 and 5 of the Code of Civil Procedure which reads as under :

“ORDER XXXVIII

Arrest and Attachment before judgment

Arrest before judgment

1. Where defendant may be called upon to furnish security for appearance. —Whereat any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise, —

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or (ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or (b) that the defendant is about to leave 1[India] under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

2. Security.—(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Attachment before Judgment

5. Where defendant may be called upon to furnish security for production of property.—(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of subrule (1) of this rule, such attachment shall be void.

15. Now, advertent to the facts of the case, Defendant no.1 despite the status quo Order dated 28.01.2015 passed by the Hon'ble High Court of Delhi has disposed off the suit property at Haridwar and has disposed of the entire sale consideration without paying any share to the other co-sharers.

16. In such circumstances, I have find force in the arguments of Ld. counsel for defendant no. 2 that Defendant no. 1 has deliberately disposed off the suit property at Haridwar to obstruct and delay the execution of any decree that may be passed against him in the present suit. Further, I have also found apprehension of Defendant no. 2 as reasonable that Defendant no. 1 may also dispose off other suit property situated at Jhilmil Colony, Delhi.

17. In totality of facts and circumstances of the case, the instant application is **allowed** and following order is passed:-

1. Defendant no.1 is directed to furnish security with respect of the sale proceed of suit property at Haridwar on or before the next date of hearing.
2. Defendant no. 1 is also directed to file the original title documents of the property E-69, Jhilmil Colony, Delhi-110095 on record within two weeks.

(Announced in the Open court.)

(MOHAMMAD EHTESHAM)
District Judge-03 (Shahdara),
KKD Courts, Delhi. 12.07.2025