

IN THE COURT OF GAURAV: DISTRICT JUDGE-01
SHAHDARA DISTRICT, KARKARDOOMA COURTS:
DELHI

CS No. 860/2016

In the matter of:-

Smt. Raj Kumari @ Meenakhshi

....Plaintiff

Versus

Sh. Raj Kumar Singh & Ors.

....Defendants

08.04.2026

ORDER

1. By way of this order, I shall dispose of the application under Order XXXIX Rules 1 and 2 read with Section 151 of the Civil Procedure Code, 1908 (*hereinafter referred to as "CPC"*), seeking grant of interim injunction against the defendants. By way of the said application, the plaintiff has prayed that the defendants, their representatives, agents and family members be restrained from disposing of, transferring, or otherwise creating any third-party interest in respect of property bearing No. E-501, Gali No. 23, Khajoori Khas, Delhi, ad-measuring 80 sq. yards (*hereinafter referred to as the "suit property"*), till the final disposal of the present suit.

2. Reply to the present application has been filed on behalf of the defendant no. 1 and defendant no. 2. However, despite opportunity, defendant no.1 and defendant no.2 did not appear to address arguments on the present application. Accordingly, their right to address argument stands closed. As far as defendant no.3 is concerned, she has given her no objection if the present application is allowed.

3. The brief facts necessary for adjudication of the present application are that the plaintiff has instituted the present suit seeking partition and permanent injunction in respect of the suit property. It is the case of the plaintiff that the suit property originally belonged to Late Smt. Sarvati Devi, who died intestate, leaving behind four legal heirs, namely two sons and two daughters including the plaintiff and the defendants herein. According to the plaintiff, all the parties to the present suit are the legal heirs of the deceased and are co-owners and co-sharers in the suit property and thus, entitled to equal shares therein.

4. Ld. Counsel for the plaintiff contended that the plaintiff had been requesting the defendants on several occasions to partition the suit property by metes and bounds. However, the defendants, particularly defendant no.1, allegedly avoided the same on one pretext or another.

5. She further contended that defendant no.1 has been extending threats to dispose of or sell the suit property without

giving the plaintiff her legitimate share. Moreover, the plaintiff, in order to safeguard her rights in the suit property, she was constrained to publish a public notice cautioning the general public not to deal with the said property and also issued a legal notice to the defendants requesting them to partition the property. However, despite the same, the defendants allegedly failed to take any steps towards partition of the property and continued to threaten alienation thereof, which compelled the plaintiff to institute the present suit along with the present application seeking interim protection.

6. In the written statement filed by defendant no.1 and defendant no.2, the claim of the plaintiff has been opposed. It has been averred that the suit of the plaintiff is not maintainable and is liable to be dismissed as being without cause of action. It has further averred that the plaintiff has not approached the Court with clean hands and has suppressed material facts.

7. They further averred that the plaintiff and defendant no.3 had earlier filed a suit for permanent injunction against them, which was dismissed by the Court of the learned Senior Civil Judge, Karkardooma Courts, Delhi on 31.05.2013 and therefore, according to the defendants, the present suit is barred by the principle of res judicata.

8. They further averred that during her lifetime, Late Smt. Sarvati Devi executed a registered Will dated 30.03.2011 in respect

of the suit property and another property in favour of defendant no.1. According to them, the said Will was duly executed and registered before the office of the Sub-Registrar, Meerut, Uttar Pradesh and after the death of the testatrix, defendant no.1 became the absolute owner of the suit property.

9. They further averred that a probate case bearing No. 228/2013 in respect of the said Will has been filed and is stated to be pending before the Court of the learned Civil Judge (Senior Division), Meerut, Uttar Pradesh. On the basis of these averments, the defendants have denied that the plaintiff has any right, title or interest in the suit property.

10. I have heard the argument advanced by the learned counsel for the plaintiff and carefully considered the pleadings of the parties and perused the material available on record.

11. Before proceeding further, it would be appropriate to note that the principles governing grant of temporary injunction under Order XXXIX Rules 1 and 2 CPC are well settled. For grant of such relief, the Court has to examine whether the plaintiff has been able to establish a *prima facie case*, whether the *balance of convenience lies* in favour of the plaintiff and whether the plaintiff is likely to suffer irreparable loss or injury if the relief sought is not granted.

12. In the present case, the plaintiff has instituted the suit claiming that the suit property belonged to Late Smt. Sarvati Devi and that after her demise the plaintiff and the defendants inherited the same as her legal heirs. On the other hand, the defendants have set up a defence that the deceased had executed a registered Will dated 30.03.2011 in favour of defendant no.1.

13. At this stage, the Court is not required to examine the validity or genuineness of the alleged Will in detail, as the same is a matter which can only be adjudicated upon after the parties lead evidence during trial. It is also relevant that the defendants themselves have stated that a probate proceeding in respect of the said Will is pending before a competent court. Thus, the rights of the parties in the suit property are yet to be finally determined.

14. In these circumstances, the Court is of the view that the plaintiff has been able to show the existence of a *prima facie* dispute regarding rights in the suit property, which requires adjudication during trial. Consequently, the subject matter of the suit deserves to be preserved till the final adjudication of the rights of the parties.

15. The *balance of convenience* also appears to lie in favour of the plaintiff. If the defendants are permitted to transfer or alienate the suit property during the pendency of the suit, it may lead to complications and may result in creation of third-party rights, which would make the final adjudication of the dispute difficult.

16. On the other hand, no substantial prejudice would be caused to the defendants if they are restrained from creating third-party interest in the suit property during the pendency of the proceedings, particularly when the dispute regarding the suit property is yet to be finally determined.

17. Further, if the suit property is alienated during the pendency of the present proceedings, third-party interests may come into existence which may complicate the proceedings and render the final decree difficult to enforce. In such circumstances, the plaintiff is likely to suffer irreparable injury which cannot be adequately compensated in terms of money.

18. In view of the aforesaid discussion and considering the material available on record, this Court is of the opinion that the plaintiff has been able to establish a prima facie case, the balance of convenience lies in her favour, and there exists a likelihood of irreparable loss and injury if the interim protection sought is not granted.

19. Accordingly, the application filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC is hereby allowed. The defendants, their representatives, family members or any person claiming through them are hereby restrained from selling, transferring, alienating or creating any third-party interest in respect of the suit property bearing No. E-501, Gali No. 23,

Khajoori Khas, Delhi ad-measuring about 80 sq. yards, till the final disposal of the present suit.

20. It is clarified that the observations made herein are prima facie in nature and confined only to the adjudication of the present application and shall not prejudice the merits of the main suit.

(Typed to the dictation directly, corrected and pronounced in open court on 08.04.2026).

(GAURAV)
DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI