

**IN THE COURT OF MS. AMBIKA SINGH
DISTRICT JUDGE – 01, SOUTH DISTRICT,
SAKET COURTS, NEW DELHI**

CS DJ No.601/2022

DLST010079282022



Presented on : 13-09-2022
Registered on : 27-09-2022
Decided on : 30-07-2026
Duration : 3 years, 10 months, 17 days

In the matter of :

**Shri Praveen Srivastav,
S/O Late Sh. R.G. Srivastav,
R/O 5/4/2, Geeta Colony,
Delhi-110031.**

.....plaintiff

VERSUS

**1.Sh. Debu Srivatava,
S/O Late Sh. R.G. Srivastav
Residents of 64-B, D.D.A. Flats,
Shahpur Jat, Andrewsganj,
South Delhi, Delhi-110049**

**2.Smt, Rinki,
W/O Late Sh. Sonu Srivastav
Residents of 64-B, D.D.A,
Flats, Shahpur Jat, Andrewsganj,
South Delhi, Delhi-110049**

3.Sh. Pradeep Srivastav,

S/O Late Sh. R.G. Srivastav
R/O RZ-136, Sayed Village,
Paschim Vihar, New Delhi

4. Smt. Vijay Laxmi Sharma
W/o Late Sh. Narender Sharma
R/o House No.135, Ground Floor,
Begam Pur Village,
Malvia Nagar,
Near Durga Mata Mandir, Delhi.

5.Smt. Anita,
W/O Sh. Pradeep Gupta,
R/o House NO.135,
Ground Floor, Begam Pur Village,
Malvia Nagar, Near Durga Mata Mandir, Delhi.

.....Defendants

Date of Institution	: 17.09.2022
Arguments heard on	: 15.05.2026
Date of Judgment	: 30.07.2026
Decision	: Dismissed.

**SUIT FOR PARTITION, POSSESSION, DECLARATION, AND FOR
MANDATORY AND PERMANENT INJUNCTION.**

EX-PARTE JUDGMENT

1. Vide this judgment, the present court shall decide the suit filed by the plaintiff for partition, possession, declaration and for mandatory and permanent injunction against the defendants.

2. The brief facts of the case are that the defendants No.1 to 3 are the real brothers of the plaintiff, defendant No.2 is the sister-in-law/Bhabhi and the defendants No.4 and 5 are real sisters of the plaintiff. The mother of

the plaintiff and the defendants No.1, 3, 4 and 5 and mother-in-law of defendant No.2, Late Smt. Sukh Devi was the sole and absolute owner of the properties bearing No.64-B, D.D.A. Flats, Shahpur Jat, Andrewsganj, Delhi-110049 consisting of four storeys i.e. 1st, 2nd, 3rd and 4th floor building comprising of 50 Sq. yds. and property situated at RZ-143, Second Floor, Paschim Vihar measuring 30 sq. yds.

3. It is further submitted that unfortunately, the mother of the plaintiff, defendants No.1, 3 to 5 and mother-in-law of defendant No.2 i.e. Smt. Sukh Devi expired on 21.01.2016 thereby leaving her legal heirs/legal representatives i.e. the defendants and the plaintiff. Though, the father of the plaintiff and the defendants Sh. R.G. Srivastav was pre-deceased.

4. It is further submitted that the defendants No.4 and 5 are already married and both the defendants No.4 and 5 are living happily at their matrimonial house. At the time of marriage of defendants No.4 and 5, the plaintiff also made huge expenses as per his status. The said property is a joint Hindu Family property, it remained so and is still the joint Hindu Family property of the parties to the present suit having not been partitioned.

5. It is further submitted that Since said Smt. Sukh Devi during her lifetime assured to the plaintiff to make arrangements for their respective share in the said property but the matter was being postponed on account of her ill health during her lifetime on one pretext or the other. Unfortunately said Smt. Sukh Devi expired on 21st January 2016, leaving the said properties as intestate and un-partitioned to be devolved upon the defendants and the plaintiff. Moreover, Smt. Sukh Devi was not treated well

and was not maintained by the defendants and they neglected Smt. Sukh Devi and made no provisions of her maintenance and failed to look after her. Smt. Sukh Devi during her lifetime was maintained and looked after by the plaintiff and the plaintiff used to maintain her and looking after her during her old age and during the period of her illness. All the expenses incurred in the maintenance and treatment of Smt. Sukh Devi was borne by the plaintiff. Moreover, the defendants never gave any respect/care to said Smt. Sukh Devi.

6. It is further submitted that in the month of April 2022, the plaintiff visited the said property as there is customs in the family to gather on eve of Baisakhi. The plaintiff reached at the said property at about 12.00 P.M. The plaintiff requested the defendants No.1 to 4 to partition the property by metes and bound in equal 1/6th share. However, the defendants No.1 to 3 made hue and cry at the peak of their voice and threatened the plaintiff to forget about the partition as the defendants No.1 to 3 are in possession of said property situated at 64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi and the property situated at RZ-143, Second Floor, Paschim Vihar, Delhi. The defendants No.1 to 3 openly declared that they would not allow the plaintiff to enter in the suit property as Smt. Sukh Devi had expired and he has no right to enter in the said premises. The plaintiff insisted to enter in the said property/ flat situated at Shahpur but the defendants No.1 and 3 got adamant and furious and started abusing the plaintiff and created scenes. The defendants No.1 to 3 threatened to implicate the plaintiff in false and frivolous cases in case he dares to talk about the partition of the said properties. The defendants No.1 to 3 further threatened the plaintiff that as the defendants No.1 to 3 are having original

title deeds of the said properties in question, then the defendants No.1 to 3 can part with, sell or create third party interest over the said properties in question.

7. It is further submitted that on 6th July 2022, when the plaintiff visited the said property, the defendants No.1 to 3 openly threatened to sell the said property to some outsider and would not give the respective shares to the plaintiff. The plaintiff forthwith raised the objection and resisted the proposed attempt of the defendants No.1 to 3 to sell any portion of the said property to any one without carrying out the partition of the same and without disbursing and handing over the share of the plaintiff in the said property. On the other hand, all the defendants No.1 to 4 in connivance with each other also threatened the plaintiff if the plaintiff again comes for partition the said property then he will be killed, will face dire consequences and also will be implicated in some false and frivolous cases. It became clear that after the death of Smt. Sukh Devi, all the defendants No.1 to 4 in connivance with each other with a view to grab the share of the plaintiff in the said properties, hatched a conspiracy to usurp the share of the plaintiff in the said property with the help of their goonda elements and did not agree to partition the said property.

8. It is further submitted that late Smt. Sukh Devi during her lifetime till she expired extended full affection to the plaintiff and she assured the plaintiff that she would partition the said properties and the share of the plaintiff would be secured and the plaintiff need not to worry for the same till she is alive. But after the death of Smt. Sukh Devi, the intention of all the defendants No.1 to 4 became bad and with malafide intention and as such on account of malafide and illegal acts of the

defendants No.1 to 4 in depriving the plaintiff from his respective share in the said properties has cheated the plaintiff. Over and above all, the defendants No.1 to 4 are not competent to sell and transfer the said properties or any portion to any one else but still the defendants No.1 to 4 are not allowing the plaintiff to partition the said property and intend grabbing the shares of the plaintiff.

9. It is further submitted that the defendants N1.1 to 3 are in possession of the original documents of both the properties i.e. situated at 64-B, D.D.A. Flats, Shahpur Jat, Andrewsganj, Delh and the property bearing No. RZ-143, Second Floor, Paschim Vihar, Delhi. The plaintiffs have requested several times to the defendants No.1 to 3 to partition the said property i.e 64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi and the property situated at RZ-143, Second Floor, Paschim Vihar, Delhi and the defendants No.1 to 3 are not ready to partition the said suit properties. Hence, the present suit has been filed by the plaintiff against the defendants.

10. Summons of the suit were served upon the defendants. However, defendants did not appear despite service nor they have filed any written statement on their behalf and the defendants No.1, 2 & 4 were proceeded ex-parte vide order dated 20.04.2023 and defendants No. 3 & 5 were proceeded ex-parte vide order dated 04.08.2023, and the matter was fixed for ex-parte plaintiff's evidence.

11. The plaintiff Sh. Praveen Shrivastava examined himself as PW-1 and has tendered his affidavit in evidence as Ex.PW1/A and relied upon following documents:

1. **Ex.PW1/1** is notice dated 06.08.2022.

2. **Ex.PW1/2** is the original site plan of property at Shahpur Jat.
3. **Ex.PW1/3** is the original site plan of property at Paschim Vihar, New Delhi.
4. **Ex.PW1/4 (Colly.)** is postal records.
5. **Ex.PW1/5 (Colly.)** is the tracking reports.
6. **Ex.PW1/6** is the original death certificate of Smt. Sukh Devi.
7. **Ex.PW1/7** is Certificate under Section 65B of the Indian Evidence Act.
8. **Ex.PW1/8** is copy of Aadhar Card of plaintiff.
9. **Ex.PW1/9** is printout of electricity bill in the name of Smt. Sukh Devi.

12. **Sh. Komal Sharma, Field Associate, BSES was examined as PW-2**, who proved the attested copy of the electricity bill dated 22.06.2024 in the name of Ms. Sukh Devi W/o Late Sh. R.G. Srivastav R/o 64-B, Janta House, DDA, Shahpur Jat, New Delhi-110049, alongwith payment receipts and reading chart as **Ex. PW2/1 (Colly)**.

13. **Sh. Pradeep Srivastav was examined as PW-3**, who is the defendant No.3 in the present case, however, he was summoned as a witness. PW-3 admitted that plaintiff is his younger brother. Defendant No.1 is his younger brother and defendant No.2 is wife of his brother Sonu Srivastav. Defendants Nos.4 and 5 are his sisters. He further admitted that property bearing no.64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi-49 is four storeys building, constructed upto fourth floor. First to fourth floors are in the name of his mother late Smt. Sukh Devi. Ownership documents of this property were in custody of his mother. His mother used to reside at first floor. Ground floor is owned by some other person. He further stated that property bearing no.RZ-143, Second Floor, Pashchim Vihar, New

Delhi belongs to his younger brother Devu Srivastav and not in the name of his mother. Ownership documents of this property were in custody of his mother but now he did not know in whose custody those documents are. PW-3 replied to the question put by Ld. Counsel for plaintiff that this property was in the name of wife of his younger brother Devu Srivastav. He further stated that first floor of property bearing no.64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi-49 is in occupation of wife of his younger brother late Sonu Srivastav. Second floor is in the occupation of his brother Devu Srivastav. He did not know about the status of third floor and fourth floor. PW-3 further admitted that he had received documents of the present suit. He further admitted that his mother was the owner of both the properties.

14. **Sh. Jagbir Singh, JSA, Record Keeper, Assessment and Collections Department, South Zone, R K Puram was examined as PW-4,** who produced original documents i.e. mutation/assessment of property bearing no.64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi-49, which is in the name of Smt. Sukh Devi, W/o R G Srivastav, **as Ex.PW4/1.**

15. The plaintiff did not examine any other witness in support of his case and closed his evidence and the matter was fixed for ex-parte final argument.

16. I have heard the ex-parte final arguments from Ld. Counsel for the plaintiff and perused the records carefully.

17. Perusal of record shows that defendants were served, however, defendants did not appear despite service nor they have filed any written statement on their behalf and the defendants No.1, 2 & 4 were proceeded ex-parte vide order dated 20.04.2023 and defendants No. 3 & 5 were

proceeded ex-parte vide order dated 04.08.2023.

18. It is well settled proposition of law by numerous dictum of the Apex Court that plaintiff has to prove its case on merits even in ex-parte cases. Unchallenged and uncontroverted testimony has to be sifted to check the claim of plaintiff and relief prayed for against the defendant, who preferred not to join the proceedings.

19. For the relief of Pashim Vihar property, first of all, it has to be proved that property actually belonged to the predecessor in interest of plaintiff. However, if we peruse the record and evidence, there is nothing on record like registered sale-deed etc. which shows that property belonged to Late Smt. Sukh Devi. The PW-4 has produced certain property documents, however, they are only property tax document which do not confer any right or title over the suit property. Similarly, other documents are only GPA, Agreement to sell etc. which are also notarized only. It is well settled law that these documents also do not confer any right, title or interest over the suit property. Ownership proof i.e. GPA, Agreement to Sell dated 16.03.1993 etc. in respect of suit property bearing No. 64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi-49 which is in the name of the mother of the plaintiff is a notarized document nor duly registered document. On the basis of the notarized document, prayers of the plaintiff cannot be accepted. As far as other suit property i.e. RZ-143, Second Floor, Paschim Vihar measuring 30 sq. yds is concerned, no ownership documents of the said property has been placed on record by the plaintiff.

Relief

20. In view of the above discussions, considering the notarized

document of property bearing No. 64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi-49, the Court is not inclined to decree the present suit in respect of property bearing No. 64-B, DDA Flats, Shahpur Jat, Andrewsganj, Delhi-49. Further, there is no ownership documents of other suit property i.e. RZ-143, Second Floor, Paschim Vihar measuring 30 sq. yards on record. Accordingly, **the present suit is dismissed. No order as to cost.**

21. **Decree-sheet be prepared, accordingly.**

22. **File be consigned to the Record Room.**

**Announced in the Open Court
on 30.07.2026**

**(Ambika Singh)
District Judge -01/South
Saket Courts, New Delhi**