

CS DJ ADJ 17109/16

ASHA DIXIT Vs. PRADEEP KUMAR SHARMA AND ANR

28.07.2025

Present: Sh. Ajay Dabas and Ms. Priyanka Dagar, Ld.
Counsel with Applicant Renu.
Ld. Counsel for Defendant no.1 through VC.
Sh. Jitender Chaudhary and Ms. Shilpa Chohan, Ld.
Counsel for Defendant no.2 through VC.
Sh. Abhishek Hajarika, Ld. Counsel for proposed
Defendant no.4(c) and Defendant no.4(d) through
VC.

Application under Order 22 Rule 3 of CPC (wrongly mentioned as application under Order 23 Rule 3 of CPC).

There is an application under Order 23 Rule 3 of CPC filed on behalf of the plaintiff. The application is filed under the wrong provision of law. It should have been under Order 22 Rule 3 of CPC and it is being treated as such.

The applicant has informed that the plaintiff died on 18.05.2024, and that the plaintiff had executed a registered GPA, Will, etc. dated 01.10.2014, on the basis of which, on her demise, the present applicant has to represent the estate of the deceased plaintiff/stepped into the shoes of the deceased plaintiff.

Reply has been filed to the said application on behalf of the defendant no.2, in which it is claimed that, since the applicant has failed to obtain probate of the Will, the applicant cannot be impleaded as a LR of the deceased plaintiff.

One reply has also been filed on behalf of defendant no.4(c) and defendant no.4(d), where they are stating that the suit may be dismissed as abated.

No reply has been filed to the said application by defendant no.1. The right of the defendant no.1 to file reply is, therefore, closed.

Alongwith the application, the applicant has placed on record a copy/photocopy of the death certificate of the plaintiff, as well as, of the Will. The Will bears the signatures of 2 witnesses.

As far as objection of defendant no.2 is concerned that the Will has not been probated, it is settled law that, in Delhi, there is no requirement of filing of probate petition in case, a Hindu dies, leaving behind a Will. It cannot be termed as a mandatory requirement before the plaintiff's estate can be represented by the applicant.

Whether or not the Will is genuine, is a matter which may have to be decided during trial, but it cannot be decided, at this stage, as also, considering that no other person has come forward to be impleaded in place of the deceased plaintiff.

A perusal of the Will reveals that the Will also refers to the applicant as the sister of the testator and even if the Will was to be ignored, the applicant may be entitled to represent the estate of the deceased plaintiff.

The application is, accordingly, disposed off as allowed.

Be passed over for arguments on the application under Order 39 Rules 1 & 2 of CPC at 02.00 PM.

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At 02.11 PM.

Present: Ms. Priyanka Dagar, Ld. Counsel for Applicant through VC alongwith Sh. Ajay Dabas, Ld. Counsel present physically in court with Applicant Renu. Ld. Counsel with Defendant no.1.
Sh. Jitender Chaudhary and Ms. Shilpa Chohan, Ld. Counsel with Defendant no.2.
Sh. Abhishek Hajarika, Ld. Counsel for proposed Defendant no.4(c) and Defendant no.4(d) through VC.

Fresh vakalatnama filed on behalf of defendant no.1.

Same is taken on record.

Part arguments heard on the application under Order 39 Rules 1 & 2 of CPC today.

There is a complexity which has arisen in the present matter, because of want of any order of injunction.

Today, on being questioned, the defendant no.1 has claimed that nothing out of the original plot is left in his hands and he has sold everything to different persons.

I have noticed that on 13.08.2018, a specific direction was given to the defendant no.1 to furnish the particulars of all purchasers/successors and their respective shares in the suit property, which direction was never complied with by the defendant. In fact, his statement was recorded, because of non compliance of the said order of 13.08.2018 as per order dated 28.09.2019.

Thereafter, the court was constrained to appoint a Local Commissioner to visit the property on 30.04.2022. The report of the Local Commissioner is on record.

As per the report of the Local Commissioner, a large portion of the property was found locked and existence of plot of smaller size has been reported by the Local Commissioner. No sale documents were produced by the persons present in the said plot, where ever, they were present. The relevant portion is quoted for ease of reference:

3. That the undersigned reached the above mentioned property bearing No. WZ- 490, Gali No.16, Sadh Nagar, Palam Colony, New Delhi-110045 measuring 70 Sq. Yds. at about 10 AM where some persons namely Sudhir Kumar Srivastava, Defendant no. 2, Smt. Renu Sharma W/o Sh. MR Sharma who is GPA holder of the plaintiff and Sh. Bijender Singh Advocate who is counsel for Defendant no. 1 met with the LC. The said property was found locked thereafter the said person arranged the key and opened the main gate thereafter the undersigned inspected the said property which is built up to one room, one kitchen and one office of BJP. The said person provided the photocopy of sale deed only of the said property. The electricity meter was found installed at the property but the copy of bill was not provided.

4. That the second part of the property is measuring area about 256 Sq. yds. and the same was confirmed by the copy of sale deed provided by Sh. Sudhir Kumar Srivastava. The undersigned inspected the said property and it was found that it was constructed up to 16 flats i.e. parking on ground floor and 4 flats on each floor. Upon inspection the undersigned came to know that Sudhir Kumar Srivastava made a with some collaboration agreement builder/construction company and constructed the said flats. Thereafter they sold some flats to other respective persons and some flats were given on rent. Currently, the flats constructed on Upper Ground Floor and 1st Floor were sold by the builder to the other persons.

5. That on 2nd Floor one flat was occupied by a tenant namely Chander Prakash S/o Sh. Phool Singh and he told that the name of owner of the said Flat is Sh. Bharat Bhushan. One other flat at 2nd Floor bearing flat no. S-2 is jointly owned by Sh. Mukesh Kumar Gupta and Smt. Geetanjali Gupta which purchased by them in the year 2012 from the builder. One other flat at 2nd Floor was found locked. One other flat bearing no. S-1 is 3 BHK and one Sh. Kailash Chand Sharma is residing with his family and he refused to tell anything about ownership or his title.

6. That on 3rd Floor all the 4 flats were given on rent to other persons namely Sh. Sushil Kumar, Sh. Satender Kumar, Sh. Kundan Kumar Singh and Ms. Jyoti respectively by Sh. Sudhir Kumar Srivastava.

7. That there is a common gali of about 11 feet 7 inch width and 75 feet 3 inch length after the property measuring 256 sq. yds. and separated the other properties on the suit property. After the said gali one corner side plot was found locked from inside and no one came out even after repeated ringing on door bell.

8. That along with the said corner plot one another plot i.e. 2nd plot was also found locked and one plate was found affixed at the main gate titled Sharma Sadan-Rakesh Sharma and address is WZ-490C and no one came out even after repeated door bells.

9. That the 3rd plot owner Vasudev Sharma S/o Sh. Nand Lal Sharma he purchased the 80 Sq. yards from Rakesh sharma R/o WZ 490A Gali No. 16, Sadh Nagar Palam Colony, in the year of 1999.

10. That one another plot bearing no. WZ-490B, Gali No. 16, Sadh Nagar, New Delhi was found and upon local inspection the undersigned came to know that the said plot belongs to one Smt. Jeeva Devi W/o Sh. Mahavir Prasad and the same was purchased in 2006 area measuring 78 sq. yds. but no such document has been provided to the undersigned in that respect.

The litigation is pending since long and the defendant sold a portion of 256 Sq. Yards, initially, to the defendant no.2 on a false statement, which is recorded as a recital in the said sale deed i.e. all the legal heirs of deceased Girdhari Lal had relinquished their shares in favour of the defendant no.1.

Relinquishment Deed has been perused.

The Relinquishment Deed never contained the name or signature of the plaintiff Smt. Asha Dixit, who was the sister of defendant no.1, as also, legal heir of her deceased father.

The relationship with the plaintiff is not disputed in the written statement of defendant no.1. Therefore, the sale deed in favour of defendant no.2 contains a fraudulent recital that all the legal heirs of father of the parties relinquished their shares in favour of the defendant no.1. The 1/8th share of plaintiff in the suit property cannot be accounted for by the defendant no.1.

Therefore, I have noticed that there is a prima facie case for grant of preliminary decree of partition of 1/8th share. Further. I have noticed that the conduct of the defendant no.1, in the present case, is not appreciable as he has not only concealed the facts and circumstances in the sale deed in favour of defendant no.2, he has also not come out openly disclosing all the transactions made by him vis-a-vis the suit property, despite directions by the court.

Whether or not defendant no.2 is a bonafide purchaser without notice, is matter which has to be decided during trial by the court. Suffice, it is to note, at this stage, that the plaintiff has not challenged the sale deed in favour of defendant no.2, which is prior to filing of the suit. To the extent the undivided share would have changed hands is a matter which the court can consider,

ultimately, while ordering the partition. However, to prevent any further complication in the matter and fraud to the other members of the public, it is hereby directed that there shall be no other sale and purchase of the suit property bearing no. WZ-490 and/or WZ 490A, WZ 490B and WZ 490 C, carved out of the said plot, Gali No.16, Sadh Nagar, Palam Colony, New Delhi-110045, originally, admeasuring 615 Sq. Yards without prior permission of this court, till the next date of hearing, which permission will be considered by the court as and when the facts are disclosed and purchaser, as well as, seller are both before the court.

It would have to be seen at appropriate stage as to whether any sale has been made of the remaining share by defendant no.1? If so, whether it is with a full disclosure of the pendency of the present litigation to the purchaser of the property or the pendency of the litigation stands concealed from those persons, as the status of subsequent buyers as bonafide or not would also have to be considered.

Considering the way in which the defendant no.1 has been conducting himself and now claiming that he has sold the entire property and no documents have been placed on record by him, it is hereby directed that he shall furnish an affidavit, disclosing all his bank account where the sale proceeds may have ultimately gone, as also, disclosing how much money has been received by him through banking channel and how much in cash and copy of sale documents be filed in the court, failing which the court shall strike off his defence and proceed against him.

I am giving one opportunity to counsel for defendant no.2, as well as, to proposed defendant no.4(c) and no.4(d) to address arguments as to why a preliminary decree of partition be

not passed in the present case and why order passed today be not made absolute till the disposal of the case.

Copy of this order be pasted on the suit property. For that purpose, order be given dasti to the plaintiff. Photography and videography be carried out.

Copy of this order be also sent to Sub-Registrar concerned directing him to ensure that there is no registration of any documents of the said property.

List this matter for arguments on the impleadment application on 23.08.2025.

At this stage, there is a request for change of date. It is unanimously agreed that the matter be kept for 20.09.2025.

Order dasti.

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